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Wednesday
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Presidential Documents

Title 3—

The President

Proclamation 7155 of December 4, 1998

National Drunk and Drugged Driving Prevention Month, 1998

By the President of the United States of America

A Proclamation

For most Americans, driving an automobile has become a practical necessity. Whether in an urban, suburban, or rural setting, the daily routine of modern life requires that we have access to reliable and affordable transportation from our homes to our offices, schools, shopping, and elsewhere. But the right to drive a vehicle brings with it the responsibility to drive safely. A fundamental part of this responsibility is the need to stay free from alcohol and drugs when driving. Driving under the influence of alcohol or mind-altering drugs can turn an automobile into a lethal weapon.

The Department of Transportation released some encouraging data earlier this year regarding injuries and fatalities caused by drunk or drugged drivers. The number of Americans killed in alcohol-related crashes last year dropped to an all-time low, representing a decline of more than 30 percent since 1982. Drunk-driving deaths accounted for less than 40 percent of all traffic deaths, and alcohol-related fatalities among 15- to 20-year-olds dropped by 5 percent last year alone. We have achieved this progress because of stronger laws, tougher enforcement, and increased public awareness. These statistics also reflect the effectiveness of the legislation I fought for and signed into law 3 years ago to help ensure zero tolerance for underage drinking and driving.

But there is more we must do. Last year, more than 16,000 Americans lost their lives to impaired driving, and hundreds of thousands more were injured. Research shows that the risk of being involved in a fatal car crash is 11 times greater when drivers have a blood alcohol content (BAC) exceeding .08. By passing a tough national standard of impaired driving at .08 BAC—an important measure I continue to challenge the Congress to enact—we could save additional lives. At my direction, the Secretary of Transportation developed a plan to make .08 BAC the standard on Federal property, such as national parks and military bases, and included in his plan a strategy to raise public awareness of the risks associated with drinking and driving. Federal agencies currently are implementing the Secretary's recommendations.

In memory of the thousands who have lost their lives to drunk and drugged drivers, I ask all motorists to participate in ''National Lights on for Life Day'' on Friday, December 18, 1998, by driving with vehicle headlights illuminated. By doing so, we will call attention to this critical national problem and remind others on the road of the responsibility to drive free of the influence of drugs and alcohol.

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 December 1998 as National Drunk and Drugged Driving Prevention Month. I urge all Americans who drive to take responsibility for themselves, their loved ones, guests, and passengers; to stop anyone under the influence of alcohol or mind-altering drugs from getting behind the wheel; and to help teach our young people safe and alcohol- and drug-free driving behavior.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of December, 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.

William J. Clinton

[FR Doc. 98–32894
Filed 12–08–98; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7156 of December 4, 1998

National Pearl Harbor Remembrance Day, 1998

By the President of the United States of America

A Proclamation

Fifty-seven years ago, at 7:55 on Sunday morning, December 7, 1941, Imperial Japan launched a surprise attack on American forces at Pearl Harbor, thrusting the United States into the crucible of World War II. From the vantage point of history, we now know that the events of that day would transform our Nation and the course of world history.

Attacking in two waves, Japanese aircraft killed or wounded almost 3,600 Americans—over 1,000 of them aboard the battleship ARIZONA—sank or badly damaged most of our Pacific Fleet, and destroyed or damaged almost all U.S. aircraft in the area. In his historic speech to the Congress on the following day, President Franklin Roosevelt requested and the Congress approved a declaration of war against Japan. With characteristic optimism and confidence in the spirit of the American people, he predicted that ''No matter how long it may take us . . . the American people in their righteous might will win through to absolute victory.''

President Roosevelt proved to be right, although he would not live to see the ultimate triumph of freedom. After almost 4 long years of struggle and sacrifice by the men and women of our Armed Forces, sustained by the prayers of their families and the efforts of determined working men and women throughout our land who built our Nation into the ''Arsenal of Democracy,'' the United States and our allies prevailed over the forces of fascism and oppression.

To understand and appreciate the magnitude of our victory in World War II, we have only to remember Pearl Harbor. We have only to remember the indomitable spirit of the American forces there who, despite the death and destruction engulfing them, individually and collectively responded with courage and selflessness. We remember the sailors who raced to their battle stations and opened fire on the attacking Japanese planes even as their ships were ablaze and sinking. We remember the small, valiant band of Army pilots who managed to take off during the second wave of bombing and, though hopelessly outnumbered, shot down several enemy aircraft. We remember the crew of the crippled OKLAHOMA cheering their comrades on the NEVADA as she made a desperate dash down the harbor channel to safety. These heroes of Pearl Harbor were an inspiration to our entire country—and they remain so today. It is fitting that each year, on this day, we remember them and give thanks for their courage, their sacrifice, and their refusal to be defeated. Because of them, and the millions of other Americans like them who have served our Nation in uniform, America is free, strong, and at peace.

To pay tribute to these heroes and to honor our solemn obligation to those who sacrificed their lives to defend our freedom that fateful Sunday morning, the Congress, by Public Law 103–308, has designated December 7, 1998, as ''National Pearl Harbor Remembrance Day.''

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim December 7, 1998, as National Pearl Harbor Remembrance Day. I urge all Americans to observe this day with appropriate programs, ceremonies, and activities in honor of the Americans who served

at Pearl Harbor. I also ask all Federal departments and agencies, organizations, and individuals to fly the flag of the United States at half-staff on this day in honor of those Americans who died as a result of the attack on Pearl Harbor.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of December, 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.

William J. Clinton

[FR Doc. 98–32895
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Rules and Regulations

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

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–291–AD; Amendment 39–10931; AD 98–25–06]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–200, –200C, –300, and –400 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 737–200, –200C, –300, and –400 series airplanes. This action requires repetitive inspections to detect cracking of the corners of the door frame and the cross beams of the aft cargo door, and corrective actions, if necessary. This action also provides an optional terminating action for the repetitive inspection requirement of this AD. This amendment is prompted by reports indicating that fatigue cracks have been detected in the corners of the door frame and the cross beams of the aft cargo door on several in-service airplanes, and by another report indicating that rapid depressurization occurred during flight on one of those airplanes. The actions specified in this AD are intended to prevent fatigue cracking of the corners of the door frame and the cross beams of the aft cargo door, which could result in rapid depressurization of the airplane.

DATES: Effective December 24, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 24, 1998.

Comments for inclusion in the Rules Docket must be received on or before February 8, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–291–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: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received reports indicating that fatigue cracks have been detected in the corners of the door frame and the cross beams of the aft cargo door on several in-service Boeing Model 737–200, –200C, –300, and –400 series airplanes. Such fatigue cracking results from cabin pressurization cycles. The FAA also has received a report indicating that an incident of rapid depressurization occurred during flight on one of the affected Boeing Model 737–200 series airplanes. Investigation of that incident revealed fatigue cracks in the corners of the frame of the aft cargo door of the airplane. These conditions, if not corrected, could result in rapid depressurization of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 737–52–1079, Revision 5, dated May 16, 1996. That service bulletin describes procedures for repetitive internal detailed visual inspections to detect cracking of the corners of the door frame and the upper and lower cross beams of the aft cargo door, and corrective actions, if necessary. Those corrective actions include repair, replacement of the damaged frame, and modification of the aft cargo door. The modification entails installation of a steel reinforcement angle at each corner of the door and installation of reinforcements on the upper and lower cross beams of the door. Accomplishment of such modification eliminates the need for the repetitive internal detailed visual inspections.

Explanation of the Requirements 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 fatigue cracking of the corners of the door frame and the cross beams of the aft cargo door, which could result in rapid depressurization of the airplane. This AD requires accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Other Relevant Rulemaking

The FAA previously has issued AD 90–06–02, amendment 39–6489 (55 FR 8372, March 7, 1990), applicable to certain Boeing Model 737 series airplanes. AD 90–06–02 requires accomplishment of certain structural modifications, which constitutes terminating action for the repetitive inspection requirements of this AD.

Differences Between Service Bulletin and This AD

Operators should note that, unlike the procedures described in the service bulletin, this AD does not permit further flight with stop-drilled cracks in the frame of the aft cargo door. The FAA has determined that, because of the safety implications and consequences associated with such cracking, any subject aft cargo door frame that is found to be cracked must be permanently repaired and modified prior to further flight.

Operators also should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this AD requires the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Explanation of Applicability

Operators should note that the effectivity listing of the service bulletin includes Boeing Model 737–200 and

–200C series airplanes having line numbers 6 through 873 inclusive. The applicability of this AD includes not only those airplanes listed in the effectivity listing of the service bulletin, but also Boeing Model 737–200, –200C, –300, and –400 series airplanes; having line numbers 874 through 1642 inclusive; that have certain replacement doors installed and that have not been modified in accordance with Boeing Service Bulletin 737–52–1079.

Explanation of Compliance Threshold

Although the service bulletin recommends that the initial inspection be performed prior to the accumulation of 12,000 total flight cycles, this AD requires that the initial inspection be performed within 90 days or 700 flight cycles after the effective date of this AD, whichever occurs later. The FAA has determined that the number of total flight cycles for an airplane may not be a good indicator of the total cycle count for the subject aft cargo door, because a door may have been removed from an airplane with many total flight cycles and reinstalled on an airplane with relatively fewer total flight cycles. Also, the FAA finds that, in view of the reports indicating that rapid depressurization occurred on an airplane on which fatigue cracks were found in the frame of the aft cargo door, and because of the safety implications and consequences associated with such cracking, the initial compliance time specified in this AD is appropriate.

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–291–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:

98–25–06 Boeing: Amendment 39–10931. Docket 98–NM–291–AD.

Applicability: The following airplane models, certificated in any category:

- Model 737–200 and –200C series airplanes, line numbers 6 through 873 inclusive;
- Model 737–200, –200C, –300, and –400 series airplanes; line numbers 874 through 1642 inclusive; equipped with an aft cargo door having Boeing part number (P/N) 65–47952–1 or P/N 65–47952–524; except:

1. Those airplanes on which that door has been modified in accordance with Boeing Service Bulletin 737–52–1079; or,

2. Those airplanes on which the door assembly having P/N 65–47952–524 includes four straps (P/N's 65–47952–139, 65–47952–140, 65–47952–141, and 65–47952–142) and a thicker lower cross beam web (P/N 65–47952–157).

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 (d) 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 fatigue cracking of the corners of the door frame and the cross beams of the aft cargo door, which could result in rapid depressurization of the airplane, accomplish the following:

(a) Within 90 days or 700 flight cycles after the effective date of this AD, whichever occurs later, perform an internal detailed visual inspection to detect cracking of the

corners of the door frame and the cross beams of the aft cargo door, in accordance with Boeing Service Bulletin 737–52–1079, Revision 5, dated May 16, 1996.

(1) If no cracking is detected, accomplish the requirements of either paragraph (a)(1)(i) or (a)(1)(ii) of this AD.

(i) Repeat the internal visual inspection thereafter at intervals not to exceed 4,500 flight cycles. Or,

(ii) Prior to further flight, modify the corners of the door frame and the cross beams of the aft cargo door in accordance with the service bulletin. Accomplishment of such modification constitutes terminating action for the repetitive inspection requirements of this AD.

(2) If any cracking is detected in the upper or lower cross beams, prior to further flight, modify the cracked beam in accordance with paragraph III.C. of Part I of the Accomplishment Instructions of the service bulletin. Accomplishment of such modification constitutes terminating action for the repetitive inspection requirements of this AD for the repaired beam.

(3) If any cracking is detected in the forward or aft upper door frame, prior to further flight, repair the frame and modify the corners of the door frame of the aft cargo door, in accordance with paragraph III.E. of Part I of the Accomplishment Instructions of the service bulletin, except as provided by paragraph (b) of this AD. Accomplishment of such modification constitutes terminating action for the repetitive inspection requirements of this AD for the upper door frame.

Note 2: Cracks of the forward or aft upper door frame, regardless of length, must be repaired prior to further flight in accordance with paragraph III.E. of Part I of the Accomplishment Instructions of the service bulletin.

(4) If any cracking is detected in the forward or aft lower door frame, prior to further flight, replace the damaged frame with a new frame, and modify the corners of the door frame of the aft cargo door, in accordance with paragraph III.F. of Part I of the Accomplishment Instructions of the service bulletin. Accomplishment of such modification constitutes terminating action for the repetitive inspection requirements of this AD for the lower door frame.

(b) Where Boeing Service Bulletin 737–52–1079, Revision 5, dated May 16, 1996, specifies that certain repairs are to be accomplished in accordance with instructions received from Boeing, this AD requires that, prior to further flight, such repairs be accomplished in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(c) Modification of the corners of the door frame and the cross beams of the aft cargo door in accordance with Boeing Service Bulletin 737–52–1079, Revision 5, dated May 16, 1996, or in accordance with the requirements of AD 90–06–02, amendment 39–6489, constitutes terminating action for the repetitive inspection requirements of this AD.

Note 3: Modification of the corners of the door frame and the cross beams of the aft cargo door accomplished prior to the effective date of this AD in accordance with Boeing Service Bulletin 737–52–1079, dated December 16, 1983; Revision 1, dated December 15, 1988; Revision 2, dated July 20, 1989; Revision 3, dated May 17, 1990; or Revision 4, dated February 21, 1991; are considered acceptable for compliance with paragraph (c) of this AD.

(d) 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 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) 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.

(f) Except as provided by paragraph (b) of this AD, the inspections, repair, replacement, and modification (if accomplished), shall be done in accordance with Boeing Service Bulletin 737–52–1079, Revision 5, dated May 16, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from 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.

(g) This amendment becomes effective on December 24, 1998.

Issued in Renton, Washington, on November 30, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–32361 Filed 12–8–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–319–AD; Amendment 39–10932; AD 98–23–51]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) T98–23–51 that was sent previously to all known U.S. owners and operators of certain Boeing Model 727 series airplanes by individual telegrams. This AD requires modification of certain fuselage skin lap joints and, on certain airplanes, modification of the lap joint(s) in the door structure. This AD also requires repetitive internal detailed visual inspections to detect cracking, corrosion, or delamination of the fuselage skin lap joints, and repair, if necessary. This action is prompted by information that a modification required by an existing AD may not have been accomplished completely on as many as 160 airplanes. The actions specified by this AD are intended to prevent corrosion and subsequent fatigue cracking of the fuselage skin lap joints, which could result in rapid decompression of the airplane.

DATES: Effective December 14, 1998, to all persons except those persons to whom it was made immediately effective by telegraphic AD T98–23–51, issued on November 27, 1998, which contained the requirements of this amendment.

The incorporation by reference of Boeing Service Bulletin 727–53–0072, Revision 5, dated June 1, 1989, as listed in the regulations, is approved by the Director of the Federal Register as of December 14, 1998.

The incorporation by reference of Boeing Document D6–54929, ''Aging Airplane Corrosion Prevention and Control Program, Model 727,'' Revision A, dated July 28, 1989, as listed in the regulations, was approved previously by the Director of the Federal Register as of December 31, 1990 (55 FR 49258, November 27, 1990).

Comments for inclusion in the Rules Docket must be received on or before February 8, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–319–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The applicable service information 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: Steven R. Edgar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2025; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On February 21, 1991, the FAA issued AD 91–06–06, amendment 39–6921 (56 FR 9612, March 7, 1991), which is applicable to certain Boeing Model 727 series airplanes. [The airplanes affected by that AD are those on which the body skin longitudinal lap joints were bonded together with a room temperature curing epoxy adhesive (''cold-bonded'') in conjunction with flush riveting.] That AD superseded two existing AD's to require inspections to detect cracks, corrosion, and delamination of the fuselage skin lap joints, and repair, if necessary. That AD also requires modifications of certain lap joints. That action was prompted by reports of cracking in the lap joints. The actions required by that AD are intended to prevent rapid decompression of the airplane.

The compliance times for accomplishment of the modifications required by AD 91–06–06 were specified in that AD as follows:

- For airplanes that had accumulated 45,000 or more landings as of August 21, 1989 [the effective date of AD 89–15–06, amendment 39–6262 (54 FR 29530, July 13, 1989)]: Within 4 years after August 21, 1989.
- For airplanes that had accumulated less than 45,000 landings as of August 21, 1989: Within 6 years after August 21, 1989, or prior to the accumulation of 28,000 landings, whichever occurs later.

Actions Since Issuance of Previous Rule

The FAA recently received information that the modification required by AD 91–06–06 may not have been accomplished completely on as many as 160 airplanes that are included in the applicability of that AD and that are subject to the unsafe condition addressed in that AD. These airplanes were converted from a passenger-carrying to a cargo-carrying (''freighter'') configuration, or to a passenger-and cargo-carrying (''combi'') configuration. These conversions included installation of a main deck cargo door. Although these conversions were accomplished in accordance with several different Supplemental Type Certificates (STC), in each case, as part of the modification, a doubler (approximately 20 feet long) was installed over lap joints S–4L, S–10L, S–19L, and (sometimes) S–26L.

FAA personnel have recently examined five of these airplanes, operated by three operators, and determined that the lap joints had not been modified, as required, in the area covered by the doublers on any of the five airplanes. Preliminary inquiries indicate a substantial likelihood that very few of the freighters or combi airplanes have been so modified.

FAA's Determinations

The installation of doublers over the lap joints during the freighter or combi conversions did not correct the unsafe condition addressed by AD 91–06–06 because it is not effective in preventing delamination, corrosion, and cracking in the lap joint. In fact, in some cases, the unsafe condition may be aggravated because of load redistribution due to the installation of a main deck cargo door. This may accelerate crack growth along the lap joint under the doubler.

Because it is possible that these lap joints have been neither inspected nor modified as required by AD 91–06–06, the FAA considers that there is a significant risk that such cracking may have occurred on these airplanes. Because without special inspections such cracking cannot be detected until the crack emerges from under the doubler, such cracks could remain undetected until they approach or reach a length at which the fuselage can no longer sustain pressure loads sufficiently to prevent catastrophic rapid decompression.

Ordinarily, failure to comply with an AD may result in immediate grounding of the affected airplane(s) until compliance is achieved. However, given the size of the fleet affected by this AD, the length of time that will be necessary to modify the fleet using existing available maintenance facilities, and the interim inspections required by this AD, the FAA considers that immediate grounding would be unwarranted.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 727–53–0072, Revision 5, dated June 1, 1989, which describes procedures for modification of the fuselage skin lap joints. Those procedures include separating and reworking the joint; performing a high frequency eddy current inspection of the holes to detect cracking; and oversizing the fastener holes; and installing certain fasteners.

Explanation of Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, the FAA issued Telegraphic AD T98–23–51 to prevent corrosion and subsequent fatigue cracking of the fuselage skin lap joints, which could result in rapid decompression of the airplane. The AD requires modification of certain fuselage skin lap joints. On certain airplanes, the fuselage structure that was removed to make the opening for the door is used to fabricate the door itself. For those airplanes, this AD also requires modification of the lap joint(s) in the door structure. This AD allows continued operation of these airplanes for a limited period to permit the required modification to be accomplished without undue disruption. The modification is required to be accomplished in accordance with the service bulletin described previously.

This AD also requires repetitive internal detailed visual inspections to detect cracking, corrosion, or delamination of the fuselage skin lap joints, and repair, if necessary. The AD requires that those inspections be accomplished repetitively at intervals not to exceed 60 landings until the modification is accomplished. The inspection is required to be accomplished in accordance with certain tasks specified in Boeing Document D6–54929, ''Aging Airplane Corrosion Prevention and Control Program, Model 727,'' Revision A, dated July 28, 1989. Repair, if necessary, is required to be accomplished in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate.

The FAA investigated several different non-destructive inspection methods that could be used to detect cracking in the upper row of the lap joints that have been covered by the doublers. The FAA (including representatives of the FAA Technical Center and a national resource specialist for non-destructive evaluation), in conjunction with Sandia Laboratories, The Boeing Company, and several designated engineering representatives, considered various inspection methods. Those methods included low frequency eddy current, high frequency eddy current, x-ray, sliding probe eddy current, and ultrasonic techniques. Some of these techniques hold potential for detecting cracking in the hidden upper row of the lap joint. However, those methods tend to be sensitive to configurational differences and require good accessibility to the joint. Due to variability of configurations within the fleet, a single procedure and standard could not be developed in sufficient

time to accomplish the necessary inspections.

As a result of these discussions, the FAA deemed a detailed internal visual inspection the most useful short-term inspection. The FAA expects that this inspection is not likely to detect cracking unless the cracking has turned and run circumferentially. However, this inspection can be accomplished quickly and easily in the field, and is expected to yield some measure of security in the short term.

While these inspections will be effective in detecting some types of cracking, the FAA is not confident that all potentially catastrophic cracking can be detected by these inspections. Therefore, this AD requires accomplishment of the modification within 120 days or 250 landings after the effective date of the AD, whichever occurs later. In addition, paragraph (f) specifies that no airplane shall be returned to service following modification from a passenger-carrying to a ''freighter'' or a ''combi'' configuration, unless the modification required by paragraph (b) of this AD has been accomplished on that airplane.

It should be noted that, although this AD has the effect of staying the requirement of AD 91–06–06 to accomplish the modifications in the area of the main deck cargo door, for the period specified in this AD, this stay applies only once the AD becomes effective. For the period between the compliance deadline imposed by AD 91–06–06 and the effective date of this AD, the FAA has initiated investigations to determine the causes of the operators' failures to comply, and may initiate appropriate legal enforcement action to address those failures.

In most AD's, the compliance provision includes the phrase, ''compliance required as indicated, unless accomplished previously.'' In this AD, the phrase ''unless accomplished previously'' is omitted because it is possible that operators' maintenance records may indicate that the requirements of AD 91–06–06, including the modification, have been accomplished. As indicated, however, these records are likely to be inaccurate for the subject airplanes. Therefore, this AD requires that the modification be accomplished regardless of the information contained in the maintenance records. If an operator can verify that the modification required by this AD has, in fact, been accomplished, it may request approval of an alternative method of compliance (AMOC), in accordance with the provisions of paragraph (g) of this AD, based on submission of data verifying such accomplishment.

Since the issuance of AD 91–06–06, the FAA has approved several AMOC's for that AD for freighter and combi airplanes. These AMOC's allow internal and external visual inspections in lieu of the repetitive visual and high frequency eddy current inspections. However, the approval of these alternative inspection methods did not affect the modification requirement of paragraph F. of AD 91–06–06, and were based on an assumption that the modification either had been or would be accomplished. In addition, these inspections are unreliable to detect cracking in the upper row of fasteners under the doubler.

The FAA also approved one AMOC, applicable to Supplemental Type Certificate (STC) SA1368SO, which approved the modification in accordance with the STC to be an acceptable alternative to the modification required by paragraph F. of AD 91–06–06. Preliminary information indicates that as many as 30 airplanes may have been modified in accordance with STC SA1368SO.

As explained previously, installation of the doubler in accordance with this STC is not likely to stop propagation of cracking that was present at the time the main deck cargo door was installed, nor will it prevent new cracks from initiating. Further, once initiated, such cracking is likely to grow undetected because it is hidden between the doubler and the inner skin. AMOC's approved previously in accordance with AD 91–06–06 are not considered to be valid as alternative methods of compliance with this AD unless those AMOC's are approved separately under the provisions of paragraph (g) of this AD.

Normally, the compliance time specified for the required modification would be sufficient for the FAA to provide notice and a brief public comment period before adopting such a requirement. However, in this case, because of the significant time required to accomplish the modification, the full compliance time is necessary to prevent unnecessarily disrupting operations. This compliance period will enable operators either to comply or to develop sufficient data to substantiate extension of the compliance time or approval of an AMOC. This compliance time does not reflect a lack of urgency for adopting the requirement.

On November 19, 1998, the FAA met with affected operators and STC holders to discuss the issues addressed in this AD. A joint FAA/industry team was formed to address the relevant technical issues and to develop data necessary to address the identified unsafe condition. It was agreed that the team's objective is either to provide means for operators to comply within the specified compliance time or to substantiate that an acceptable level of safety can be maintained for some longer period before the required modification is accomplished.

At this meeting, the FAA emphasized the necessity of correcting the unsafe condition by modifying the lap joints under the doublers. The FAA also emphasized the risk that AMOC requests would not be approvable if, as some suggested, industry focuses its efforts during the 120-day compliance time on attempting to develop alternatives to modifying the lap joints. For airplanes that are already scheduled to undergo heavy maintenance during the 120-day compliance time, operators have the opportunity to comply with this AD with the least possible disruption. Accomplishment of the modification on these airplanes also will provide important data on the condition of the lap joints under the doubler that will be very useful in assessing the appropriateness of AMOC requests for other airplanes. Therefore, if operators fail to avail themselves of this opportunity, the FAA will not be receptive to requests for AMOC's or compliance time extensions for those airplanes.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on November 27, 1998, to all known U.S. owners and operators of certain Boeing Model 727 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

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–319–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:

98–23–51 Boeing: Amendment 39–10932. Docket 98–NM–319–AD.

Applicability: Model 727 series airplanes, line positions 1 through 849 inclusive; that have been converted from a passenger-carrying to a cargo-carrying (''freighter'') configuration, or to a passenger- and cargo-carrying (''combi'') configuration; 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 (g) 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.

To prevent corrosion and subsequent fatigue cracking of the fuselage skin lap joints, which could result in rapid decompression of the airplane, accomplish the following:

(a) Within 60 landings after the effective date of this AD, perform a detailed internal visual inspection to detect cracking, corrosion, or delamination of the fuselage skin lap joints where those lap joints are covered by external doublers at stringers S–4L, S–10L, S–19L, and S–26L from body station 360 to 740; in accordance with task numbers C53–224–01 and C53–111–01 of Boeing Document D6–54929, ''Aging Airplane Corrosion Prevention and Control Program, Model 727,'' Revision A, dated July 28, 1989. The lap joints must be completely exposed to perform the inspection.

(1) If no cracking, corrosion, or delamination is found, repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 60 landings until the modification required by paragraph (b) of this AD is accomplished.

(2) If any crack, corrosion, or delamination is found, prior to further flight, repair damaged structure in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Thereafter, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 60 landings until the modification required by paragraph (b) of this AD is accomplished.

(b) Modify the fuselage skin lap joints where those lap joints are covered by external doublers at stringers S–4L, S–10L, S–19L, and S–26L from body station 360 to 740 by removing the external doublers; and by separating and reworking the joint in accordance with Part IV, Figure 4, of the Accomplishment Instructions of Boeing Service Bulletin 727–53–0072, Revision 5, dated June 1, 1989, except that blind fasteners shall not be installed. Before oversizing the fastener holes as part of the modification, perform a high frequency eddy current inspection of the holes to detect cracking, in accordance with the service bulletin; and, prior to further flight, repair any cracking in accordance with a method approved by the Manager, Seattle ACO. When reassembling the lap joint, all three rows of fasteners must penetrate all layers of the lap joint, including the upper skin, lower skin, and the doublers; and the stringers and tripler, as applicable. Accomplish the modification at the latest of the times specified in paragraphs (b)(1), (b)(2), and (b)(3) of this AD.

(1) Prior to the accumulation of 28,000 total landings.

(2) Within 250 landings after the effective date of this AD.

(3) Within 120 days after the effective date of this AD.

Note 2: Installation of protruding head fasteners in the upper row of fasteners of the lap joint in itself does not constitute accomplishment of the modification.

(c) For airplanes on which the cargo door itself was manufactured using the original fuselage skin, paragraphs (a) and (b) of this AD also apply to the lap joint(s) in the door structure.

(d) Accomplishment of the modification required by paragraph (b) of this AD constitutes terminating action for the inspections required by paragraph (a) of this AD, and constitutes an acceptable alternative method of compliance with paragraph F. of AD 91–06–06 for the affected area.

(e) Contrary provisions of AD 91–06–06 notwithstanding, this AD allows continued operation of the subject airplanes following the effective date of this AD in accordance with the terms of this AD, provided that the modification required by AD 91–06–06 has been accomplished on all lap joints other than those in the area of the main deck cargo door.

(f) For any airplane that, as of the effective date of this AD, is being, or will be converted from a passenger-carrying to a cargo-carrying (''freighter'') configuration, or to a passenger- and cargo-carrying (''combi'') configuration: After the effective date of this AD, no such

airplane shall be returned to service following such conversion unless the modification required by paragraph (b) of this AD has been accomplished on that airplane.

(g) 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 3: Alternative methods of compliance, approved previously in accordance with AD 91–06–06, amendment 39–6921, are not considered to be approved as alternative methods of compliance with this AD.

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

(h) 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.

(i) The actions shall be done in accordance with Boeing Service Bulletin 727–53–0072, Revision 5, dated June 1, 1989; and Boeing Document D6–54929, ''Aging Airplane Corrosion Prevention and Control Program, Model 727,'' Revision A, dated July 28, 1989.

(1) The incorporation by reference of Boeing Service Bulletin 727–53–0072, Revision 5, dated June 1, 1989, is approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Document D6–54929, ''Aging Airplane Corrosion Prevention and Control Program, Model 727,'' Revision A, dated July 28, 1989, was approved previously by the Director of the Federal Register as of December 31, 1990 (55 FR 49258, November 27, 1990).

(3) 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.

(j) This amendment becomes effective on December 14, 1998, to all persons except those persons to whom it was made immediately effective by telegraphic AD T98–23–51, issued on November 27, 1998, which contained the requirements of this amendment.

Issued in Renton, Washington, on December 1, 1998.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–32472 Filed 12–8–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–33–AD; Amendment 39–10936; AD 98–25–10]

RIN 2120–AA64

Airworthiness Directives; Aircraft Belts, Inc. Model CS, CT, FM, FN, GK, GL, JD, JE, JT, JU, MD, ME, MM, MN, NB, PM, PN, RG, and RH Seat Restraint Systems

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Aircraft Belts, Inc. Model CS, CT, FM, FN, GK, GL, JD, JE, JT, JU, MD, ME, MM, MN, NB, PM, PN, RG, and RH seat restraint systems, installed on, but not limited to, Beech Aircraft Corp., Bell Helicopter Textron, Inc., Cessna Aircraft Co., Dassault Aviation, Eurocopter Deutschland, Eurocopter France, Gulfstream Aerospace, Learjet Corp., Lockheed Aircraft Corp., and Piper Aircraft Corp. aircraft. This action requires an inspection to ensure the locking mechanism is engaging properly, and replacing the buckle-half of the seat restraint system, if necessary. This amendment is prompted by the manufacturer reporting two failures of the seat restraint system in the field. The actions specified in this AD are intended to prevent failure of the seat restraint system due to the buckle assembly locking mechanism not engaging properly, which could result in the seat restraint system failing to properly secure the occupant during turbulence or landing.

DATES: Effective December 24, 1998.

Comments for inclusion in the Rules Docket must be received on or before February 8, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–33–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Rob Romero, Aerospace Engineer, Airplane Certification Office, ASW–150, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5102, fax (817) 222–5960.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD that is applicable to Aircraft Belts, Inc. Model CS, CT, FM, FN, GK, GL, JD, JE, JT, JU, MD, ME, MM, MN, NB, PM, PN, RG, and RH seat restraint systems installed on, but not limited to, Beech Aircraft Corp., Bell Helicopter Textron, Inc., Cessna Aircraft Co., Dassault Aviation, Eurocopter Deutschland, Eurocopter France, Gulfstream Aerospace, Learjet Corp., Lockheed Aircraft Corp., and Piper Aircraft Corp. aircraft. This action requires, within 10 hours time-in-service (TIS), a one-time inspection to ensure the locking mechanism is engaging properly, and replacing the buckle-half of the seat restraint system, if necessary. This amendment is prompted by manufacturer's reports of two failures of the seat restraint system that occurred in the field. The actions specified in this AD are intended to prevent failure of the seat restraint system due to the buckle assembly locking mechanism not engaging properly, which could result in the seat restraint system failing to properly secure the occupant during turbulence or landing.

The FAA has reviewed Aircraft Belts, Inc. Service Bulletin dated June 16, 1998, which describes procedures for inspecting the buckle assembly on certain restraint systems to ensure the locking mechanism engages properly.

Since an unsafe condition has been identified that is likely to exist or develop on other Aircraft Belts, Inc. Model CS, CT, FM, FN, GK, GL, JD, JE, JT, JU, MD, ME, MM, MN, NB, PM, PN, RG, and RH seat restraint systems of the same type design, this AD is being issued to prevent failure of the seat restraint system due to the buckle assembly locking mechanism not engaging properly, which could result in the seat restraint system failing to properly secure the occupant during turbulence or landing. This AD requires, within 10 hours TIS, a one-time inspection to ensure the seat restraint system locking mechanism is engaging properly, and replacing the buckle-half of the seat restraint system, if necessary. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the aircraft. Therefore, the one-time inspection and replacement, if necessary, is required within 10 hours TIS, and this AD must be issued immediately.

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.

Cost Impact

The FAA estimates that 12,278 seat restraint systems will be affected by this proposed AD, that it will take approximately one-half work hour per seat restraint system to accomplish the inspection and replacement (if necessary), and that the average labor rate is $60 per work hour. Replacement parts will cost $10 per buckle half. However, the manufacturer has stated that it will provide the buckle half to owners/operators at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $368,340.

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 rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–SW–33–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, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

AD 98–25–10 Aircraft Belts, Inc.: Amendment 39–10936. Docket No. 98–SW–33–AD.

Applicability: Model CS, CT, FM, FN, GK, GL, JD, JE, JT, JU, MD, ME, MM, MN, NB, PM, PN, RG, and RH seat restraint systems installed on, but not limited to, Beech Aircraft Corp., Bell Helicopter Textron, Inc., Cessna Aircraft Co., Dassault Aviation, Eurocopter Deutschland, Eurocopter France, Gulfstream Aerospace, Learjet Corp., Lockheed Aircraft Corp., and Piper Aircraft Corp. aircraft, certificated in any category.

Note 1: This AD applies to each seat restraint system 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 seat restraint systems that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any seat restraint system from the applicability of this AD.

Compliance: Required within 10 hours time-in-service after the effective date of this AD, unless accomplished previously.

To prevent failure of the seat restraint system due to the buckle assembly (buckle) locking mechanism not engaging properly, which could result in the seat restraint system failing to properly secure the occupant during turbulence or landing, accomplish the following:

Note 2: The part number (P/N) of the seat restraint system is on the identification label located on each end of the seat restraint system near the anchor point (Example: P/N MD A2626–E010). The model is designated by the first two letters of the P/N.

(a) Visually inspect all affected seat restraint systems to determine if the locking mechanism is engaging properly in accordance with the following:

(1) Open the lift lever of the buckle fully until it will not open any further. This will cause the locking mechanism to pivot on the pivot pin.

(2) Allow the spring to close the lift lever slowly until the lift lever is back to its at-rest position.

(3) After the lever is completely closed, examine the slot in the bottom of the buckle. The locking mechanism should be firmly seated against the edge of the slot as shown in Figure 1.

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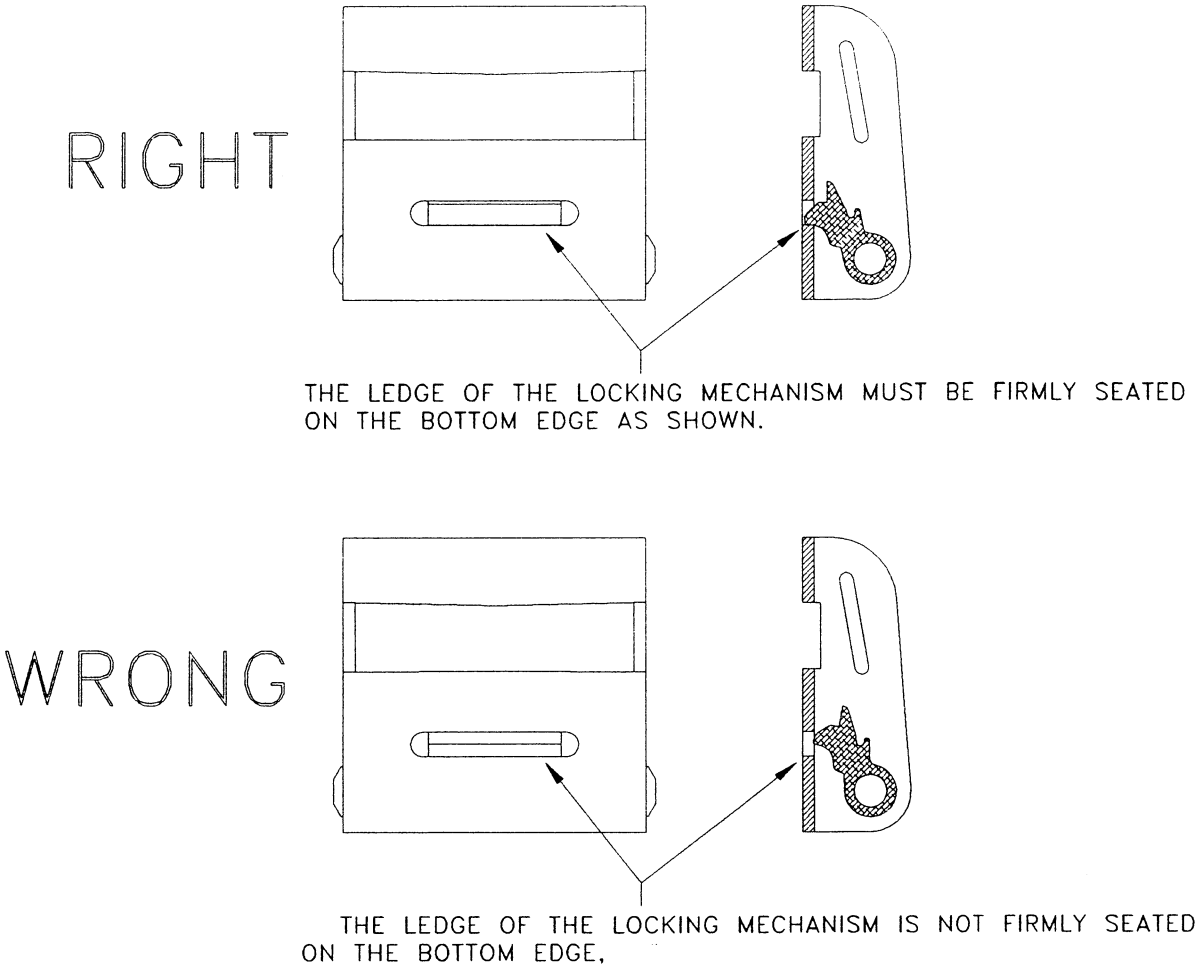

Figure 1

BILLING CODE 4910–13–C

(b) If the locking mechanism does not seat properly, replace the buckle with an airworthy buckle.

(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, Airplane Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Airplane Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Airplane Certification Office.

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

(e) This amendment becomes effective on December 24, 1998.

Issued in Fort Worth, Texas, on December 3, 1998.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–32619 Filed 12–8–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AJ42

Dependents Education: Increase in Educational Assistance Rates

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: A provision of the Internal Revenue Service Restructuring and Reform Act of 1998 provides for an increase of approximately 20% in educational assistance rates payable under Survivors' and Dependents' Educational Assistance (DEA) effective October 1, 1998. The regulations governing those rates are changed to show the rates indicated in the Act.

DATES: Effective Dates: This final rule is effective October 1, 1998.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Education Adviser, Education Service, Veterans Benefits Administration (202) 273–7187.

SUPPLEMENTARY INFORMATION: The Internal Revenue Service Restructuring and Reform Act of 1998 (Pub. L. 105–206) amended sections 3532, 3534, and 3542 of title 38, U.S. Code to provide an increase of approximately 20% in educational assistance rates payable under DEA effective October 1, 1998. Changes are made to the regulations governing rates payable under DEA to reflect the statutory changes.

Nonsubstantive changes also are made for the purpose of clarity.

Substantive changes made by this final rule merely reflect statutory requirements. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612 and does not directly affect small entities. This final rule directly affects only individuals. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance number for the program affected by this final rule is 64.117.

List of Subjects in 38 CFR Part 21

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

Approved: December 2, 1998.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set out above, 38 CFR part 21, subparts C is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart C—Survivors' and Dependents' Educational Assistance Under 38 U.S.C. Chapter 35

1. The authority citation for part 21, subpart C, continues to read as follows:

Authority: 38 U.S.C. 501(a), 512, 3500–3566, unless otherwise noted.

2. In § 21.3045, paragraph (h) is revised to read as follows:

§ 21.3045 Entitlement charges.

* * * * *

(h) *Entitlement charge for correspondence courses.* The charge against entitlement for pursuit of a course exclusively by correspondence will be 1 month for each:

(1) $404 paid after December 31, 1989, and before October 1, 1998, to a spouse or surviving spouse as an educational assistance allowance;

(2) $485 paid after September 30, 1998.

(Authority: 38 U.S.C. 3686(a))

* * * * *

3. In § 21.3131, paragraph (a) is revised to read as follows:

§ 21.3131 Rates—educational assistance allowance—38 U.S.C. chapter 35.

(a) *Rates.* Except as provided in § 21.3132, educational assistance allowance is payable at the following rates effective October 1, 1998:

Type of course	Monthly rate
Institutional:	
Full-time	$485.
¾ time	$365.
½ time	$242.
Less than ½ but more than ¼ time [1]	$242.
¼ time or less [1]	$121.
Cooperative training (other than farm cooperative) (Full time only)	$485
Apprentice or on-job (full time only) [2]:	
First six months	$353.
Second six months	$264.
Third six months	$175.
Fourth six months and thereafter	$88.
Farm cooperative:	
Full time	$392.

Type of course	Monthly rate
¾ time	$294.
½ time	$196.
Correspondence	55 percent of the established charge for the number of lessons completed by the eligible spouse or surviving spouse and serviced by the school—Allowance paid quarterly.[3]

[1] If an eligible person under 38 U.S.C. chapter 35 pursuing independent study on a less than one-half-time basis completes his or her program before the designated completion time, his or her award will be recomputed to permit payment of tuition and fees not to exceed $242 or $121, as appropriate, per month, if the maximum allowance is not initially authorized.

[2] See footnote 5 of § 21.4270(c) for measurement of full time and § 21.3132(c) for proportionate reduction in award for completion of less than 120 hours per month.

[3] Established charge means the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State Approving agency or the actual cost to the eligible spouse of surviving spouse, whichever is less. VA considers the continuity of an enrollment broken when there are more than 6 months between the servicing of the lessons.

(Authority: 38 U.S.C. 3532(a), 3542(a), 3687(b)(2))

* * * * *

§ 21.3300 [Amended]

4. In § 21.3300, paragraph (c) is amended by removing ''$119'' and adding, in its place, ''$152''.

§ 21.3333 [Amended]

5. In § 21.3333, paragraph (a) is amended by removing ''$404'' and adding, in its place, ''$485'', and by removing ''$127'' both places it appears and adding, in its place, ''$152''; and paragraph (b)(1) is amended by removing ''$13.46'' and adding, in its place, ''$16.16'', and by removing ''$404'' and adding, in its place, ''$485''.

[FR Doc. 98–32646 Filed 12–8–98; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 1

[FRL–6200–1]

Changes to Regulations Concerning Membership of EPA's Environmental Appeals Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA amends its regulations establishing the Environmental Appeals Board by increasing the limit on the number of Board members from three to four. The workload of the Environmental Appeals Board has increased since it was established. This action ensures that the Board can respond effectively to the growing workload.

EFFECTIVE DATE: These regulations are effective on December 9, 1998.

FOR FURTHER INFORMATION CONTACT: Ronald L. McCallum, Esq., Environmental Appeals Board, 401 M Street, SW., Washington, DC 20460, (202) 501–7060.

SUPPLEMENTARY INFORMATION: On February 13, 1992, EPA promulgated regulations establishing the Agency's Environmental Appeals Board. The regulations contemplated a three-member Board. In recognition of the Board's increasing workload, the Agency is through this rule increasing the limit on the number of Board members from three to four.

Reasons for Change

The past several years have seen a significant increase in the Environmental Appeals Board's workload. The cause of the workload increase has been two-fold. First, there has been an increase in the number of appeals to the Board pursuant to the authorities which were part of the original delegation to the Board in the 1992 regulations. For example, the number of appeals of Prevention of Significant Deterioration (PSD) permits issued under the Clean Air Act has increased dramatically. During FY 1995, only two PSD appeals were received by the Board. In sharp contrast, twenty-four PSD appeals were received during FY 1997, and twenty-nine such appeals were received during FY 1998. Second, the Board's jurisdiction has expanded over the past several years to encompass such matters as petitions for reimbursement filed under Section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), further increasing the Board's workload. Other areas in which the Board's jurisdiction has expanded include, for example, acid rain appeals under 40 CFR Part 78, Title V federal permit appeals under 40 CFR Part 71, and certain Safe Drinking Water Act penalty appeals. Notably, the Agency currently has underway a number of rulemakings which can be expected to further tax the Board as currently constituted.

Through this rule, the Agency is responding to this increasing workload by raising the limit on the number of Board members from three to four. The current regulations envision the Board sitting as a panel on cases pending before it. They provide that, while ordinarily all three members will sit as a panel, the Board can proceed with two members if all three are not available because of recusal or absence. In the event that a two-member panel results in a tie, the matter is referred to the Administrator to break the tie.

The changes made today envision the Board typically sitting in three-member panels drawn, on a rotating basis, from a four member Board. The ''off'' member will then be able to dedicate his/her energies to bringing other matters to conclusion. In addition to leaving the Board better positioned to respond to its workload, this change, while preserving the capacity of the Board to act with two members, will increase the probability of three-member panels notwithstanding absences and recusals, and will concomitantly decrease the probability of the Administrator's being required to break a tie.

Administrative Requirements

EPA has found that good cause exists under 5 U.S.C. 553 (b)(3) (A), (B) and (d)(3) for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 30-day delay in effectiveness as to these rules and revocations. This rulemaking is related solely to EPA's organization, procedure, and practice. Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not require prior consultation with State, local, and tribal government officials as

specified by Executive Order 12875 (58 FR 58093, October 28, 1993) or Executive Order 13084 (63 FR 27655 (May 10, 1998)), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation.

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. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties. EPA has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because the regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 40 CFR Part 1

Environmental protection, Statement of Organization and General Information.

Dated: December 3, 1998.

Carol M. Browner,

Administrator, Environmental Protection Agency.

For the reasons set forth in the preamble, title 40, Chapter I of the Code of Federal Regulations is amended as follows:

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION:

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

Authority: 5 U.S.C. 552.

2. Section 1.25 is amended by revising paragraph (e)(1) to read as follows:

§ 1.25 Staff Offices.

* * * * *

(e)(1) Environmental Appeals Board. The Environmental Appeals Board is a permanent body with continuing functions composed of no more than four Board Members designated by the Administrator. The Board shall decide each matter before it in accordance with applicable statutes and regulations. The Board typically shall sit on matters before it in three-Member panels, and shall decide each matter by a majority vote. In the event that absence or recusal prevents a three-Member panel, the Board shall sit on a matter as a panel of two Members, and two Members shall constitute a quorum under such circumstances. The Board in its sole discretion shall establish panels to consider matters before it. The Board's decisions regarding panel size and composition shall not be reviewable. In the case of a tie vote, the matter shall be referred to the Administrator to break the tie.

* * * * *

[FR Doc. 98–32684 Filed 12–8–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD055–3021; FRL–6199–3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Stage II Vapor Recovery Comparability Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on a State Implementation Plan (SIP) revision submitted by the State of Maryland. This revision concerns a plan which demonstrates that the emissions reductions of volatile organic compounds (VOC) required in ozone attainment and marginal ozone nonattainment areas in Maryland are comparable to the reductions which would be achieved by Stage II vapor recovery (Stage II) in those same areas. EPA is approving the Stage II comparability plan in the State of Maryland in accordance with the Clean Air Act (the Act).

DATES: This rule is effective on February 8, 1999, without further notice unless EPA receives adverse written comment by January 8, 1999. Should EPA receive such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Makeba A. Morris, Chief, Technical Assessment Branch, Mailcode 3AP22, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and Maryland Department of the Environment, 2500 Broening Highway, Baltimore Maryland 21224.

FOR FURTHER INFORMATION CONTACT: Ruth E. Knapp, (215) 814–2191, or by e-mail at knapp.ruth@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On November 5, 1997, the State of Maryland submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of a demonstration of how control measures already being implemented are achieving comparable emission reductions as would be achieved by a Stage II vapor recovery program. Section 184(b) of the Act requires states in the Ozone Transport Region (OTR) to implement control measures that achieve emission reductions comparable to implementing Stage II, or to implement a Stage II program. This requirement applies in all areas not already required to implement Stage II based on their ozone nonattainment classification. All areas in Maryland that are classified as serious ozone nonattainment areas or above have already implemented the Stage II program. As the entire State of Maryland is within the OTR, the Stage II comparability requirement applies in all of its ozone attainment areas and marginal ozone nonattainment areas.

Summary of SIP Revision

On November 5, 1997, the State of Maryland submitted a formal revision to its SIP. The SIP revision consists of an explanation of the VOC emission reductions required by control measures comparable to Stage II vapor recovery in Maryland's marginal ozone

nonattainment areas and ozone attainment areas. Therefore, the implementation of Stage II or comparable VOC measures are required in Allegany, Caroline, Dorchester, Garrett, Kent, Queen Anne's, Somerset, St. Mary's, Talbot, Washington, Wicomico, and Worcester Counties.

Maryland projects that implementing Stage II in these areas would result in emission reductions of approximately 3.03 tons per day (Stage II Comparability Study for the Northeast Ozone Transport Region (EPA–452/R–94–011)). However, in a letter to EPA dated March 13, 1997, Maryland opted to satisfy the Act requirements for Stage II by adopting other control strategies to achieve emission reductions comparable to those from implementing Stage II. Maryland has implemented the following regulations to achieve comparable reductions:

1. COMAR 26.11.19.09 Cold and Vapor Degreasing, adopted effective June 5, 1995 (62 FR 41853, August 4, 1997).
2. COMAR 26.11.19.11 Lithographic Printing, adopted effective May 8, 1991 (62 FR 46199, September 2, 1997).
3. COMAR 26.11.19.18 Screen Printing, adopted effective November 7, 1994 (62 FR 53544, October 15, 1997).
4. COMAR 26.11.19.19 Expandable Polystyrene Operations, adopted effective July 3, 1995 (62 FR 53544, October 15, 1997).
5. COMAR 26.11.19.23 Vehicle Refinishing, adopted effective May 22, 1995 (62 FR 41853, August 4, 1997).

The projected VOC emissions reductions from these measures are listed below, and these reductions total more than Maryland's projection for emission reductions from Stage II.

Control strategy	1999 total projected emission reduction (tons/day)
Degreasing	2.08
Auto Refinishing	0.57
Lithographic and Screen Printing	0.47
Expandable Polystyrene Operations	0.27
Total	3.39

EPA is publishing this Stage II comparability plan without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on February 8, 1999 without further notice unless EPA receives adverse comments by January 8, 1999. If EPA receives adverse comment, EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

II. Final Action

EPA is approving the Stage II vapor recovery comparability plan for the State of Maryland for Allegany, Caroline, Dorchester, Garrett, Kent, Queen Anne's, Somerset, St. Mary's, Talbot, Washington, Wicomico, and Worcester Counties.

III. Administrative Requirements

A. Executive Orders 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875

Under E.O. 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. If EPA complies by consulting, E.O. 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 written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 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 rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is ''economically significant,'' as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has 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 final rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects 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 EPA complies by consulting, E.O. 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, E.O. 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. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. 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. 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 the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 8, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Approval of this Stage II vapor recovery comparability plan allows the State of Maryland to achieve comparable reductions in VOC emissions from control measures other than Stage II.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone.

Dated: November 30, 1998.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

2. Section 52.1076 is amended by revising the section heading, by designating the existing paragraph as (a), and adding a paragraph (b) to read as follows:

§ 52.1076 Control strategies: ozone

* * * * *

(b) EPA approves as a revision to the Maryland State Implementation Plan, the Stage II vapor recovery comparability plan for the counties of Allegany, Caroline, Dorchester, Garrett, Kent, Queen Anne's, Somerset, St. Mary's, Talbot, Washington, Wicomico, and Worcester Counties submitted by the Maryland Department of the Environment on November 5, 1997.

[FR Doc. 98–32577 Filed 12–8–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD076–3030a; FRL–6197–3]

Approval and Promulgation of Air Quality Implementation Plans; State of Maryland—General Conformity Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct action on a State Implementation Plan (SIP) revision submitted by the State of Maryland. The revision includes Maryland's regulation for general conformity, which sets forth policy, criteria and procedures for demonstrating and assuring conformity of non-transportation related Federal projects to all applicable air quality implementation plans. EPA is approving this general conformity regulation as a SIP revision in accordance with the Clean Air Act.

DATES: This direct final rule is effective on February 8, 1999 without further notice unless EPA receives adverse written comment by January 8, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Robert Kramer, Chief; Energy Radiation and Indoor Environment Branch, Mailcode 3AP23, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224.

FOR FURTHER INFORMATION CONTACT: Larry Budney , (215) 814–2184, at the EPA Region III office or via e-mail at budney.larry@.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On May 15, 1995, the Maryland Department of the Environment submitted a formal revision to its State Implementation Plan (SIP) to EPA. The SIP revision consists of the State's General Conformity Regulation (COMAR 26.11.26.03), the purpose of which is to meet the requirements of 40 CFR 51.851, State Implementation Plans, found under 40 CFR Part 51, Subpart W, Determining Conformity of General Federal Actions to State and Federal Implementation Plans. Part 51, Subpart W is commonly referred to as the Federal General Conformity Rule. Maryland's SIP revision, which is the subject of this approval action, consists of the State's General Conformity Rule. This action to approve the State's General Conformity Rule as a SIP revision is being taken under Section 110 of the Clean Air Act (CAA).

II. Summary of SIP Revision

The State's General Conformity Rule establishes standards and procedures to follow when evaluating the conformity of non-transportation related Federal projects to all applicable implementation plans developed pursuant to Section 110 and Part D of the CAA.

At 40 CFR Part 51, Subpart W, EPA promulgated the Federal rule for General Conformity to implement section 176(c) of the CAA, as amended (42 U.S.C. 7401 *et seq.*) which requires that all Federal actions conform to applicable air quality implementation plans. This rule only applies to areas designated nonattainment or maintenance areas under the CAA, as amended. This Federal rule sets forth policy, criteria, and procedures for demonstrating and assuring conformity of Federal actions to all applicable implementation plans developed pursuant to Section 110 and Part D of the CAA. The rule generally applies to Federal actions except:

(1) Those applicable under the transportation conformity rule (40 CFR Part 93, Subpart A);

(2) Actions with associated emissions below specified de minimis levels; and

(3) Certain other actions which are exempt or presumed to conform to applicable air quality implementation plans.

At 40 CFR 51.851, State Implementation Plans, EPA promulgated the requirements that must be adopted by a State and submitted as a SIP revision to implement the General Conformity provisions. The provisions adopted by the State of Maryland for General Conformity are those contained in and required by the Federal rule. EPA has reviewed the State's General Conformity Rule and has determined that it satisfies the requirements of 40 CFR 51.851. A Technical Support Document (TSD) has been prepared which details the EPA's evaluation of the State's General Conformity Rule. Interested parties may obtain a copy of the TSD by contacting the EPA Regional Office listed in the **ADDRESSES** section of this document.

EPA is approving this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse or critical comments be filed. This rule will be effective February 8, 1999 without further notice unless the Agency receives adverse comments by January 8, 1999.

If EPA receives such comments, then EPA will publish a timely withdrawal of the direct final rule informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this rule. Only parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this rule will be effective on February 8, 1999 and no further action will be taken on the proposed rule.

III. Final Action

EPA is approving the State of Maryland's General Conformity Rule SIP revision submitted by the Maryland Department of the Environment on May 15, 1998.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875

Under E.O. 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. If EPA complies by consulting, E.O. 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 written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 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 rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is ''economically significant,'' as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has 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 final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects 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 EPA complies by 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 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. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. 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. 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 the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 8, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve the Maryland General Conformity Rule may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone.

Dated: November 24, 1998.

Thomas Voltaggio,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraph (c)(136) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(136) Revisions to the Maryland State Implementation Plan submitted on May 15, 1995 by the Maryland Department of the Environment.

(i) Incorporation by reference.

(A) Letter of May 15, 1995 from the Maryland Department of the Environment transmitting Maryland Regulation COMAR 26.11.26.03, regarding General Conformity, for approval as a SIP revision.

(B) Maryland Regulation COMAR 26.11.26.03, effective June 5, 1995.

(ii) Additional material—Remainder of the May 15, 1995 state submittal pertaining to General Conformity.

[FR Doc. 98–32572 Filed 12–8–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–198–0058; FRL–6195–7]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; South Coast Air Quality Management District, San Diego County Air Pollution Control District, and Kern County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the California State Implementation Plan (SIP) which primarily concern the control of particulate matter (PM) emissions. The intended effect of these SIP revisions is principally to regulate PM emissions in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final approval of these revisions incorporates them into the federally

approved SIP for the South Coast Air Quality Management District (SCAQMD), San Diego County Air Pollution Control District (SDCAPCD), and the Kern County Air Pollution Control District (KCAPCD). EPA has evaluated each of the revisions and is approving them under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas. EPA is granting simultaneous limited approval and limited disapproval of SCAQMD Rule 403 because, while it strengthens the SIP, it also does not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas.

EFFECTIVE DATE: This approval is effective on January 8, 1999.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report of the rules are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA

Kern County Air Pollution Control District, 2700 ''M'' Street, Suite 302, Bakersfield, CA

FOR FURTHER INFORMATION CONTACT: Dave Jesson, Air Planning Office (AIR–2), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1288.

SUPPLEMENTARY INFORMATION:

I. Background

A. SIP Revisions

EPA is finalizing approval of the following rules into the California SIP: SCAQMD Rule 403, *Fugitive Dust* (as amended on February 14, 1997); SCAQMD Rule 403.1, *Wind Entrainment of Fugitive Dust* (adopted on January 15, 1993); SCAQMD Rule 1186, *PM_{10} Emissions from Paved and Unpaved Roads, and Livestock Operations* (adopted on February 14, 1997); San Diego Rule 52, *Particulate Matter* (as amended on January 22, 1997); San Diego Rule 53, *Specific Air Contaminants* (as amended on January 22, 1997); San Diego Rule 54, *Dust and Fumes* (as amended on January 22, 1997); and KCAPCD Rule 405, *Particulate Matter—Emission Rate* (as amended on May 1, 1997). These new and amended rules were submitted to EPA as SIP revisions by the California Air Resources Board (CARB) on August 1, 1997, with the exception of SCAQMD Rule 403.1, which was submitted on November 18, 1993.

EPA is also approving into the California SIP the following local ordinances for the control of fugitive dust in the Coachella Valley Planning Area: City of Cathedral City Ordinance No. 377 (2/18/93), City of Coachella Ordinance No. 715 (10/6/93), City of Desert Hot Springs Ordinance No. 93–2 (5/18/93), City of Indian Wells Ordinance No. 313 (2/4/93), City of Indio Ordinance No. 1138 (3/17/93), City of La Quinta Ordinance No. 219 (12/15/92), City of Palm Desert Ordinance No. 701 (1/14/93), City of Palm Springs Ordinance No. 1439 (4/21/93), City of Rancho Mirage Ordinance No. 575 (8/5/93), and County of Riverside Ordinance No. 742 (1/4/94). These ordinances were submitted as SIP revisions on February 16, 1995.

This approval was proposed on August 11, 1998 (63 FR 42786–42792). The reader is referred to that notice for additional detail on the affected areas and the SIP submittals, as well as a summary of relevant CAA requirements and EPA interpretations of those requirements. EPA received no comments on the proposal.

B. Specific Approval Provisions Relating to SCAQMD Rule 403—Fugitive Dust, and SCAQMD Rule 403.1—Wind Entrainment of Fugitive Dust

As discussed in the notice of proposed rulemaking, EPA is not approving into the SIP section (i) of Rule 403, which establishes fees which are enforced locally only, and which are not integral to the rule requirements.

As requested by CARB and SCAQMD, EPA is approving the following sections of the ''Rule 403 Implementation Handbook,'' which was included as part of the SIP revision and which is incorporated by reference:

(1) ''Soil Moisture Testing Methods''—ASTM Standard Test Method D 2216 for Laboratory Determination of Water (Moisture) Content of Soil, Rock, and Soil-Aggregate Mixtures, and ASTM Standard Test Method 1557 for Laboratory Compaction Characteristics of Soil Using Modified Effort (56,000 ft-lb/^{ft} (2,700 kN-m/m^3));

(2) ''Storage Piles''—Surface-Area Calculations and ASTM Standard Method C–136 for Sieve Analysis of Fine and Coarse Aggregates;

(3) ''Best Available Control Measures'';

(4) ''Reasonably Available Control Measures'';

(5) ''Guidance for Large Operations.''

EPA's proposed approval notes that Rule 403 strengthens the SIP but also contains a deficiency, in allowing the SCAQMD Executive Officer and CARB the discretion to approve equivalent test methods for determining soil moisture content and soil compaction characteristics (Rule 403, Table 2, paragraphs (1a) and (1b)). This discretion could result in enforceability problems and is therefore not consistent with CAA section 172(c)(6). Because of this deficiency, EPA cannot grant full approval of Rule 403 under section 110(k)(3) and part D. Also, because the rule is not composed of separable parts that meet all the applicable CAA requirements, EPA cannot grant partial approval of Rule 403 under section 110(k)(3). However, EPA may grant a limited approval of Rule 403 under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP.

At the same time, EPA is also finalizing a limited disapproval of Rule 403 because it contains the ''director's discretion'' deficiency. The potential sanctions that might result from this disapproval are set forth in section II. However, as discussed below in section I.C., EPA expects that future revisions to Rule 403 will resolve this issue by requiring that equivalent test methods receive EPA approval.

It should be noted that Rule 403 has been adopted by SCAQMD and is currently in effect. EPA's final limited approval/limited disapproval action will not prevent SCAQMD or EPA from enforcing the rule.

As requested by CARB and SCAQMD, EPA is approving with Rule 403.1 the following sections of the ''Rule 403.1 Implementation Handbook,'' which was included as part of the SIP revision and which is incorporated by reference:

(1) ''Wind Monitoring''—performance standards for wind monitoring equipment; and

(2) ''Storage Piles''—Surface-Area Calculations and ASTM Standard Method C–136 for Sieve Analysis of Fine and Coarse Aggregates.

C. Pending SCAQMD Amendments to Rules 403 and 1186

SCAQMD has recently issued for public review proposed revisions to Rules 403 and 1186. The proposed revisions to Rule 403 include a

correction to the ''director's discretion'' provision (e.g., in Table 2, paragraphs (1a) and (1b)), to add a requirement for EPA approval of alternative test methods. If these corrections are adopted and submitted as a SIP revision, EPA intends to propose approval of the amended provision fully, thus superseding the limited disapproval.

SCAQMD has also proposed changes to Rule 403 to minimize the impact of the agricultural provisions in Rule 403 while continuing to meet the rule's air quality objectives. In order to allow time to implement an outreach program, the District also proposes to delay by 6 months the compliance date for agricultural operations. If adopted and submitted as a SIP revision and supported by SCAQMD showings that the changes will not interfere with attainment, progress, or any other applicable CAA requirements, EPA intends to propose approval of these amendments.

Because of the need for more time to complete specific technical street sweeper certification protocols, SCAQMD has proposed to amend Rule 1186 to delay by 1 year the effective date for procurement of PM_{10}-efficient sweepers. As in the case of the proposed revisions to Rule 403, EPA intends to propose to approve the revision to Rule 1186 if adopted and submitted as a SIP revision and supported by SCAQMD showing that the revisions will not interfere with attainment, progress, or any other applicable CAA requirements.

II. Final EPA Action

Except for the director's discretion provisions of SCAQMD Rule 403, discussed above, the submitted rules and ordinances clarify and strengthen the existing SIP. EPA takes final action to approve the rules and ordinances under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

As mentioned in section I.B., EPA proposes a limited approval of SCAQMD Rule 403 under CAA sections 110(k)(3) and 301(a), and a limited disapproval of Rule 403, because the rule contains enforceability deficiencies inconsistent with CAA section 172(c)(6). Under CAA section 179(a)(2), if EPA disapproves a submission under section 110(k) for an area designated as nonattainment, based on the submission's failure to meet CAA requirements, EPA must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18 month period referred to in section 179(a) will begin on the effective date of EPA's final limited disapproval.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, 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 by 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.'' Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 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 does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, 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 by 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.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and

small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals and disapprovals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve and disapprove requirements that the State is already imposing. Therefore, because the Federal SIP approval and disapproval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval and disapproval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. 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. 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 the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 8, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by references, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Note: Incorporation by reference of the State Implementation Plan for California was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 13, 1998.

Laura Yoshii,

Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(194)(i)(H); (c)(248)(i)(A)(*3*); (c)(248)(i)(B)(*2*); and (c)(257) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(194) * * *

(i) * * *

(H) South Coast Air Quality Management District.

(*1*) Rule 403.1, adopted on January 15, 1993.

* * * * *

(248) * * *

(i) * * *

(A) * * *

(*3*) Rules 52, 53, 54, amended on January 27, 1997.

(B) * * *

(*2*) Rule 403, amended on February 14, 1997, and Rule 1186, adopted on February 14, 1997.

* * * * *

(257) Plan revisions for the Coachella Valley Planning Area were submitted on February 16, 1995, by the Governor's designee.

(i) Incorporation by reference.

(A) Fugitive dust control ordinances for: City of Cathedral City Ordinance No. 377, adopted on February 18, 1993; City of Coachella Ordinance No. 715, adopted on October 6, 1993; City of Desert Hot Springs Ordinance No. 93–2, adopted on May 18, 1993; City of Indian Wells Ordinance No. 313, adopted on February 4, 1993; City of Indio Ordinance No. 1138, adopted on March 17, 1993; City of La Quinta Ordinance No. 219, adopted on December 15, 1992; City of Palm Desert Ordinance No. 701, adopted on January 14, 1993; City of Palm Springs Ordinance No. 1439, adopted on April 21, 1993; City of Rancho Mirage Ordinance No. 575, adopted on August 5, 1993; and County of Riverside Ordinance No. 742, adopted on January 4, 1994.

* * * * *

[FR Doc. 98–32563 Filed 12–8–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6197–8]

RIN 2060–AC19

National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks; Rule Clarifications; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule: Correction.

SUMMARY: On January 17, 1997, the EPA amended certain portions of the ''National Emission Standards for

Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks.'' This rule is commonly known as the Hazardous Organic NESHAP or the HON. Among the changes made to the rule in that action, the EPA added a definition for ''enhanced biological treatment systems or enhanced biological treatment processes'' to the rule and made clarifying revisions to appendix C of part 63. On August 22, 1997, the EPA proposed corrections to this definition in order to clarify its meaning and proposed revisions to appendix C of part 63 to reflect the clarification of the definition for ''enhanced biological treatment systems or enhanced biological treatment processes.'' The August 22, 1997 document also proposed to revise the compliance demonstration procedures for biological treatment units to remove restrictions on the use of the batch test procedure. Today's action takes final action on those proposed amendments.

These amendments to the rule will not change the basic control requirements of the rule or the level of health protection it provides. The rule requires new and existing major sources to control emissions of hazardous air pollutants to the level reflecting application of the maximum achievable control technology.

EFFECTIVE DATE: December 9, 1998.

ADDRESSES: *Docket.* Docket No. A–90–23, containing the supporting information for the original NESHAP and this action, are available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, first floor, 401 M Street, SW, Washington, DC 20460, or by calling (202) 260–7548 or 260–7549. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For general questions, contact Dr. Janet S. Meyer, Coatings and Consumer Products Group, at (919) 541–5254 (meyer.jan@epamail.epa.gov). For technical questions on appendix C and wastewater provisions, contact Elaine Manning, Waste and Chemical Processes Group, telephone number (919) 541–5499 (manning.elaine@epamail.epa.gov). The mailing address for the contacts is Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities and Background Information:

A. Regulated Entities

The regulated category and entities affected by this action include:

Category	Examples of regulated entities
Industry ..	Synthetic organic chemical manufacturing industry (SOCMI) units, e.g., producers of benzene, toluene, or any other chemical listed in table 1 of 40 CFR part 63, subpart F.

This table is not intended to be exhaustive but, rather, provides a guide for readers regarding entities likely to be interested in the revisions to the regulation affected by this action. This action is expected to be of interest to owners and operators subject to this rule who plan to use biological treatment to comply with control requirements for wastewater streams. Entities potentially regulated by the HON are those which produce as primary intended products any of the chemicals listed in table 1 of 40 CFR part 63, subpart F and are located at facilities that are major sources as defined in section 112 of the Clean Air Act (the Act). Potentially regulated entities generally are companies that manufacture industrial organic chemicals and cyclic organic crude and intermediates. To determine whether your facility is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR 63.100. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Background on the Rule

On April 22, 1994 (59 FR 19402), and June 6, 1994 (59 FR 29196), the EPA published in the **Federal Register** the NESHAP for the SOCMI, and for several other processes subject to the equipment leaks portion of the rule. These regulations were promulgated as subparts F, G, H, and I in 40 CFR part 63, and are commonly referred to as the hazardous organic NESHAP, or the HON. Since the April 22, 1994 **Federal Register** publication, there have been several amendments to clarify various aspects of the rule. Readers should see the following **Federal Register** documents for more information: September 20, 1994 (59 FR 48175); October 24, 1994 (59 FR 53359); October 28, 1994 (59 FR 54131); January 27, 1995 (60 FR 5321); April 10, 1995 (60 FR 18020); April 10, 1995 (60 FR 18026); December 12, 1995 (60 FR 63624); February 29, 1996 (61 FR 7716); June 20, 1996 (61 FR 31435); August 26, 1996 (61 FR 43698); December 5, 1996 (61 FR 64571); January 17, 1997 (62 FR 2721); and August 22, 1997 (62 FR 44608).

In June 1994, the Chemical Manufacturers Association (CMA) and Dow Chemical Company (Dow) filed petitions for review of the promulgated rule in the U.S. Court of Appeals for the District of Columbia Circuit, *Chemical Manufacturers Association* v. *EPA,* 94–1463 and 94–1464 (D.C. Cir.) and *Dow Chemical Company* v. *EPA,* 94–1465 (D.C. Cir). The petitioners raised over 75 technical issues on the rule's structure and applicability. Issues were raised regarding details of the technical requirements, drafting clarity, and structural errors in the drafting of certain sections of the rule. On August 26, 1996, the EPA proposed clarifying and correcting amendments to subparts F, G, H, and I of part 63 to address the issues raised by CMA and Dow on the April 1994 rule. On December 5, 1996 and January 17, 1997, the EPA took final action on the amendments proposed on August 26, 1996. Subsequently, the EPA determined that some revisions to the definition of ''enhanced biological treatment systems or enhanced biological treatment processes'' and to appendix C of part 63 might be appropriate. These revisions were proposed on August 22, 1997 at 62 FR 44608.

C. Public Comment on the August 22, 1997 Proposal

Three comment letters were received on the August 22, 1997 **Federal Register** document that proposed changes to the rule. All comment letters received were from industry representatives and trade associations. While the commenters were supportive of the proposed rule amendments, they also expressed concerns with the clarity of the examples used in the preamble to describe systems that do and systems that do not meet the intent of the definition. The EPA has considered these suggestions and, where appropriate, has provided clarification of these examples in this document. The EPA has also developed a technical support document to provide additional information for use in evaluating whether a biological treatment unit meets the definition of ''enhanced biological treatment system or enhanced biological treatment process.'' This document may be obtained from the Air and Radiation Docket and Information Center. It may also be obtained over the Internet at ''http://www.epa.gov/ttn/

oarpg/ramain.html.'' The Technology Transfer Network (TTN) provides information and technology exchange in various areas of air pollution control, including copies of rules and supporting documents. If more information on TTN is needed, contact the systems operator at (919) 541–5384.

D. Judicial Review

Under Section 307(b)(1) of the Act, judicial review of this final action is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Under Section 307(b)(2) of the Act, the requirements that are subject to today's publication may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

II. Clarification of Definition of Enhanced Biological Treatment System or Enhanced Biological Treatment Process

The August 26, 1996 proposed changes to the wastewater treatment provisions of the HON included provisions that provided easier compliance demonstration options for well-mixed activated sludge systems that are used to control readily biodegraded compounds. In that proposed change to the April 1994 final rule, the compounds listed in table 9 of subpart G were divided into three lists; these lists were presented in table 36 of subpart G. In the proposal, a performance evaluation would not have been required for an activated sludge system if it met the definition of ''enhanced biological treatment system or enhanced biological treatment process'' and if the unit was controlling wastewater streams that contained only list 1 compounds. The August 1996 proposed revisions to the rule also required a performance demonstration for activated sludge systems used to treat a combination of list 1 and list 2 and/or list 3 compounds.

The August 1996 proposal defined an enhanced biological treatment system as

> an aerated treatment unit(s) that contains biomass suspended in water followed by a clarifier that removes biomass from the treated water and recycles recovered biomass to the aeration unit. The mixed liquor volatile suspended solids (biomass) is greater than 1 kilogram per cubic meter throughout each aeration unit. The biomass is suspended and aerated in the water of the aeration unit(s) by either submerged air flow or mechanical agitation.

This definition of ''enhanced biological treatment system or enhanced biological treatment process'' was intended to reflect the basis for the simplified compliance approach for some systems. The three lists of compounds in table 36 of subpart G were developed by modeling performance of an activated sludge system that was a thoroughly mixed biological treatment unit. (A thoroughly mixed or completely mixed system is a biological treatment unit where biomass and wastewater entering the tank are dispersed quickly throughout the tank such that the system achieves or approaches uniform characteristics throughout the tank (Docket number A–90–23, item VII–B–8).) After the August 1996 proposal, the EPA learned that some were interpreting the proposed definition of ''enhanced biological treatment system or biological treatment process'' to apply more broadly than intended. In the January 17, 1997 final rule, the phrase ''homogeneously distributed'' was added to the second sentence of the definition to clarify the EPA's intent to define a well-mixed biological treatment unit. The EPA thought that this revision would better reflect the modeling and clarify the EPA's intent to limit the types of biological treatment units that could use the simplified compliance option to systems that were completely back mixed. The EPA also believed that this change did not alter the meaning of the term.

Following publication of the January 17, 1997 final rule, the EPA learned that industry representatives were concerned that the revised definition could be read to require absolute uniformity in the biomass concentration. These industry representatives pointed out that they believed that such a reading of the definition could preclude any system from using the simplified compliance approach and the performance evaluation exemption. It was not the EPA's intent that the phrase ''homogeneously distributed'' be interpreted this narrowly. Therefore, on August 22, 1997 the EPA proposed clarifying changes to the definition of ''enhanced biological treatment system or enhanced biological treatment process'' and proposed parallel conforming changes to appendix C to part 63.

Today's action promulgates without any changes, the definition, proposed in the August 22, 1997 document, of ''enhanced biological treatment system or enhanced biological treatment process.'' That definition reads as follows:

> Enhanced biological treatment system or enhanced biological treatment process means an aerated, thoroughly mixed treatment unit(s) that contains biomass suspended in water followed by a clarifier that removes biomass from the treated water and recycles recovered biomass to the aeration unit. The mixed liquor volatile suspended solids (biomass) is greater than 1 kilogram per cubic meter throughout each aeration unit. The biomass is suspended and aerated in the water of the aeration unit(s) by either submerged air flow or mechanical agitation. A thoroughly mixed treatment unit is a unit that is designed and operated to approach or achieve uniform biomass distribution and organic compound concentration throughout the aeration unit by quickly dispersing the recycled biomass and the wastewater entering the unit.

The description of a ''thoroughly mixed treatment unit'' in the definition is intended to convey the concept of an activated sludge system that is designed and operated to approach or achieve the characteristics of a completely back mixed system. Because the EPA does not intend the definition to allow only systems with perfect uniformity in characteristics, a ''thoroughly mixed treatment unit'' is described as a unit that is ''designed and operated to approach or achieve uniform biomass distribution and organic compound concentration.'' This description is intended to recognize that well-designed complete mix systems may still have small insignificant stagnant zones or other minor deviations from complete mixing. This was the intended meaning of the definition promulgated on January 17, 1997 and is also the intended meaning of the definition promulgated in today's action.

The EPA received three comment letters in response to the August 22, 1997 **Federal Register** proposal. While all of the commenters agreed with the proposed definition of ''enhanced biological treatment system or enhanced biological treatment process,'' they expressed a concern that the examples in the preamble did not fully reflect the intent of the definition. The objections to the first example in the August 22, 1997 preamble were that the discussion referred to the units as having ''uniform'' characteristics instead of ''approaching or achieving uniform characteristics'' as described in the proposed definition. In the example, the system that was described as meeting the enhanced biological treatment system definition was characterized as a well-designed, well-operated, and well-maintained activated sludge system that has uniform characteristics in the aeration unit. The EPA agrees with the commenters that this example only illustrates a hypothetical ideal system and it would have been more useful to have described the unit as one that ''approaches uniformity throughout the aeration unit'' instead of as one that is ''uniform.'' The EPA recognizes that it is

unrealistic to believe that aeration units will have completely uniform characteristics and also recognizes even well-designed complete mix systems may still have small insignificant stagnant zones or other minor deviations from complete mixing. Other relevant aspects of this first example are that the biological treatment unit of this enhanced biological treatment system would be thoroughly mixed throughout the unit and biomass and wastewater entering the unit would be quickly dispersed throughout the unit. The design of the unit would be such that thorough mixing and quick dispersion of the biomass and wastewater entering the unit would occur. The design and operation of the biological treatment unit would also take into account mixing, quick dispersion of the biomass and wastewater entering the unit, and the location of the wastewater inlet with regards to intake suction of surface aerators and the opportunity for volatilization prior to biodegradation.

In the second example in the proposal preamble, the EPA's intent was to make a general statement concerning the relationship between system size and location of the inlet and the number of inlets. The following adjustment to the example clarifies the intent. In smaller size units that approach a complete back mixed system, thorough mixing and quick dispersion may be achieved with a round or square tank and only one influent. For larger scale systems that have more difficulty reaching the complete back mixed conditions, thorough mixing and quick dispersion could be achieved by having multiple influents of biomass and wastewater. In either case, the biological treatment unit would approach or achieve uniform distribution of organic concentration and mixed liquor volatile suspended solids (MLVSS) throughout the vessel where the biological reactions occur.

A plug-flow system is an example of a biological treatment system that does not meet the enhanced biological treatment system definition. Plug-flow systems typically occur in long tanks with a high length-to-width ratio in which longitudinal dispersion is minimal or absent (Docket number A–90–23, item VII–B–8). Plug-flow systems are not considered acceptable units for the performance test exemption because they tend to have higher air emissions at the front of the system where the concentration is higher. The modeling used to develop the simplified compliance approach for systems meeting the definition for an ''enhanced biological treatment system or enhanced biological treatment process'' did not address plug-flow systems. The EPA did not evaluate the performance of plug-flow systems in the development of the three lists for the simplified compliance approach due to the complexity of plug-flow systems. The wide range in characteristics of plug-flow systems led the EPA to conclude that these systems had to be modeled using site-specific characteristics. Consequently, these systems are required to demonstrate compliance through use of the procedures in appendix C. The exclusion of plug-flow biological treatment systems from the simplified compliance demonstration should not be interpreted as implying that a well designed and operated plug-flow biological treatment system would not achieve the required removal of a compound and, thus, not represent an acceptable means of compliance. If correctly evaluated through the applicable procedures in appendix C to part 63, they can be acceptable.

Examples of additional biological systems that would not meet the enhanced biological treatment system definition would be units that are not thoroughly mixed throughout the aeration unit and that have large concentration gradients between the inlet and the outlet of the aeration unit. Such biological units do not quickly disperse the biomass and wastewater entering the unit throughout the unit and tend to concentrate the volatile organics in a zone with relatively high air stripping rates.

Two commenters also objected to an example in which closeness of influent to the aerators was cited as a factor that would prevent a system from meeting the definition of enhanced biological treatment system. The commenters understood the example to be introducing the use of a criterion of the distance between the influent and an aerator as a de facto measure of poor mixing. The commenters pointed out that if the system achieves quick dispersion of the biomass and wastewater entering the unit, the spatial distance between any aerators or other mixing equipment and the influent is inconsequential. One of the commenters noted that simple spatial distance is not the important issue, rather the issue is whether the influent, recycle biomass, and basin contents are mixed such that the material which is aerated is a mixture of these materials rather than the raw influent. One of the two commenters requested that the EPA delete this example and address this issue through guidance. Both commenters also requested that the EPA state that the examples in the preamble are not intended to provide guidance regarding determinations of whether a system meets the definition of an ''enhanced biological treatment system or enhanced biological treatment process.''

As a result of these comments, the EPA realized that the example lacked sufficient specificity to explain the basis for the EPA's concern. The EPA is therefore correcting this example to read:

> Other examples of units that would not meet the definition include a unit where the influent is introduced close to the *intake suction of a surface aerator,* increasing the opportunity for volatilization prior to biodegradation, and a unit where the influent is introduced close to a discharge point such that channeling occurs.

Introduction of the influent close to the intake suction of a surface aerator is of concern because the more concentrated influent stream may be picked up and sprayed through the air thereby increasing losses due to volatilization. It is recommended that the influent be introduced in the return stream of the aerator to ensure mixing of the influent and destruction by the biomass before the material is sprayed through the air by the surface aerators.

The EPA agrees with the commenters' suggestion that the EPA should provide detailed technical guidance for determining whether a biological treatment unit meets the definition of ''enhanced.'' This is important because the discussion in this document is limited to key factors and it is necessary to consider all factors that can influence mixing time and rate of volatilization before concluding that a system meets the criteria in the definition for enhanced biological treatment system. The EPA has developed additional information to assist in the determination of whether a biological treatment unit meets the enhanced biological treatment system definition. The additional information is available from the Air and Radiation Docket and Information Center and is also available through the Internet on the TTN website at ''http://www.epa.gov/ttn.'' The EPA is presently working on additional information to assist in compliance demonstrations for biological treatment units that are not thoroughly mixed treatment units and, hence, do not meet the definition of enhanced biological treatment system. When this information is available, it will be available from the Air and Radiation Docket and Information Center and from the TTN.

III. Revisions to Requirements for Determining Site-Specific Fraction Biodegraded

All comments were supportive of the proposed amendments to revise the requirements in subpart G for determining site-specific fraction biodegraded (F_{bio}). Today's action issues the proposed revisions without change. Specifically, the EPA is revising § 63.145(h)(2) to allow use of the batch test procedure in appendix C for any type of biological treatment system. Today's action also revises table 36 by combining the list 2 and list 3 compounds into a new list 2 in table 36. These changes are being made to § 63.145(h) to provide more flexibility and to simplify this section of the rule.

IV. Revisions to Appendix C To Part 63

All comments were supportive of the proposed amendments to appendix C to part 63 to reflect the proposed revision of the definition for ''enhanced biological treatment system or enhanced biological treatment process.'' Today's action issues those proposed revisions without change.

V. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file, because 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. Along with the proposed and promulgated standards and their preambles, the contents of the docket, except for certain interagency documents, will serve as the record for judicial review. (See the Act section 307(d)(7)(A).)

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the rule under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501, *et seq.* and has assigned OMB control number 2060–0282. An Information Collection Request (ICR) document was prepared by the EPA (ICR No. 1414.03) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW; Washington, DC 20460 or by calling (202) 260–2740.

These revisions to the rule do not change the information collection requirements of the rule, and the currently approved OMB ICRs are still in force for the amended rule. The changes consist of revised definitions, alternative test procedures, and clarifications of requirements. The changes are not additional requirements and do not increase the information collection burden. Consequently, the ICR has not been revised for these amendments to the rule.

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.

C. Executive Order 12866 Review

Under Executive Order 12866, the EPA must determine whether a regulatory action is ''significant'' and, therefore, subject to OMB review and the requirements of the Executive Order. The Executive Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, the EPA has determined that this final rule is not a ''significant regulatory action'' within the meaning of the Executive Order. The amendments issued today clarify the rule and remove restrictions on use of an alternative test procedure. These amendments do not add any new control requirements. Therefore, this regulatory action is considered ''not significant'' and OMB review is not required.

D. Regulatory Flexibility/Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601, *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, requires the EPA to give special consideration to the effect of Federal regulations on small entities and to consider regulatory options that might mitigate any such impacts. The EPA is required to prepare a regulatory flexibility analysis and coordinate with small entity stakeholders if the Agency determines that a rule will have a significant economic impact on a substantial number of small entities.

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final amendment to the rule. The EPA has also determined that this amendment 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 government jurisdictions. See the April 22, 1994 **Federal Register** (59 FR 19449) for the basis for this determination. The changes to the rule merely clarify existing requirements and therefore, do not create any additional burden for any of the regulated entities.

E. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. § 801, *et seq.*, as added by the SBREFA 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 United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. § 804(2). This rule will be effective December 9, 1998.

F. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. Under section 205, the EPA must select the least costly, most cost-effective, or least burdensome

alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate or to the private sector in any one year. Therefore, the requirements of sections 202 and 205 of the Unfunded Mandates Act do not apply to this action. The EPA has likewise determined that the action promulgated today does not include any regulatory requirements that might significantly or uniquely affect small governments. Thus, today's action is not subject to the requirements of section 203 of the Unfunded Mandates Act.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (the NTTAA), Pub. L. No. 104–113, § 12(d) (15 U.S.C. 272 note), directs the 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, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The NTTAA requires the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This regulatory action amends a definition and makes clarifying revisions to appendix C of part 63 to reflect the clarification of the definition. Thus, this action does not involve any technical standards that would require the EPA to consider voluntary consensus standards pursuant to section 12(d) of the NTTAA.

H. Executive Order 12875: Enhancing Intergovernmental Partnership

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 by 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.''

Today's rule does not create a mandate on State, local or tribal governments. The rule 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 rule.

I. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA 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 final rule is considered not ''economically significant'' as defined under Executive Order 12866 and, therefore, is not subject to Executive Order 13045.

J. 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, or EPA consults with those governments. If EPA complies by 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.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. The amendments issued today clarify the rule and remove restrictions on use of an alternative test procedure and do not add any new requirements. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 30, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40 chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Section 63.111 is amended by revising the definition of ''enhanced biological treatment system or enhanced biological treatment process'' to read as follows:

§ 63.111 Definitions.

* * * * *

Enhanced biological treatment system or enhanced biological treatment process means an aerated, thoroughly mixed treatment unit(s) that contains biomass suspended in water followed by a clarifier that removes biomass from the treated water and recycles recovered biomass to the aeration unit. The mixed liquor volatile suspended solids (biomass) is greater than 1 kilogram per cubic meter throughout each aeration unit. The biomass is suspended and aerated in the water of the aeration

unit(s) by either submerged air flow or mechanical agitation. A thoroughly mixed treatment unit is a unit that is designed and operated to approach or achieve uniform biomass distribution and organic compound concentration throughout the aeration unit by quickly dispersing the recycled biomass and the wastewater entering the unit.

* * * * *

3. Section 63.145 is amended by revising paragraph (h) introductory text and paragraph (h)(2) to read as follows:

§ 63.145 Process wastewater provisions—test methods and procedures to determine compliance.

* * * * *

(h) *Site-specific fraction biodegraded (F_{bio}).* The compounds listed in table 9 of this subpart are divided into two sets for the purpose of determining whether F_{bio} must be determined, and if F_{bio} must be determined, which procedures may be used to determine compound-specific kinetic parameters. These sets are designated as lists 1 and 2 in table 36 of this subpart.

* * * * *

(2) *F_{bio}* determination. If a biological treatment process does not meet the requirement specified in paragraph (h)(1)(i) of this section, the owner or operator shall determine F_{bio} for the biological treatment process using the procedures in appendix C to part 63, and paragraph (h)(2)(ii) of this section. If a biological treatment process meets the requirements of paragraph (h)(1)(i) of this section but does not meet the requirement specified in paragraph (h)(1)(ii) of this section, the owner or operator shall determine F_{bio} for the biological treatment process using the procedures in appendix C to part 63, and paragraph (h)(2)(i) of this section.

(i) *Enhanced biological treatment processes.* If the biological treatment process meets the definition of ''enhanced biological treatment process'' in § 63.111 of this subpart and the wastewater streams include one or more compounds on list 2 of table 36 of this subpart that do not meet the criteria in paragraph (h)(1)(ii) of this section, the owner or operator shall determine f_{bio} for the list 2 compounds using any of the procedures specified in appendix C of 40 CFR part 63. (The symbol ''f_{bio}'' represents the site specific fraction of an individual Table 8 or Table 9 compound that is biodegraded.) The owner or operator shall calculate f_{bio} for the list 1 compounds using the defaults for first order biodegradation rate constants (K_1) in table 37 of subpart G and follow the procedure explained in form III of appendix C, 40 CFR part 63, or any of the procedures specified in appendix C, 40 CFR part 63.

(ii) *Biological treatment processes that are not enhanced biological treatment processes.* For biological treatment processes that do not meet the definition for ''enhanced biological treatment process'' in § 63.111 of this subpart, the owner or operator shall determine the f_{bio} for the list 1 and 2 compounds using any of the procedures in appendix C to part 63, except procedure 3 (inlet and outlet concentration measurements). (The symbol ''f_{bio}'' represents the site specific fraction of an individual Table 8 or Table 9 compound that is biodegraded.)

* * * * *

4. Table 36 of appendix to subpart G is revised to read as follows:

Appendix to Subpart G—Tables and Figures

* * * * *

TABLE 36.—COMPOUND LISTS USED FOR COMPLIANCE DEMONSTRATIONS FOR ENHANCED BIOLOGICAL TREATMENT PROCESSES (SEE § 63.145(h))

List 1	List 2
Acetonitrile	Acetaldehyde.
Acetophenone	Acrolein.
Acrylonitrile	Allyl Chloride.
Biphenyl	Benzene.
Chlorobenzene	Benzyl Chloride,
Dichloroethyl Ether	Bromoform.
Diethyl Sulfate	Bromomethane.
Dimethyl Sulfate	Butadiene 1,3.
Dimethyl Hydrazine 1,1	Carbon Disulfide.
Dinitrophenol 2,4	Carbon Tetrachloride
Dinitrotoluene 2,4	Chloroethane (ethyl chloride).
Dioxane 1,4	Chloroform.
Ethylene Glycol Monobutyl	Chloroprene.
Ether Acetate	
Ethylene Glycol Monomethyl	Cumene (isopropylbenzene).
Ether Acetate	
Ethylene Glycol Dimethyl Ether	Dibromoethane 1,2.
Hexachlorobenzene	Dichlorobenzene 1,4.
Isophorone	Dichloroethane 1,2.
Methanol	Dichloroethane 1,1 (ethylidene dichloride).
Methyl Methacrylate	Dichloroethene 1,1 (vinylidene chloride).
Nitrobenzene	Dichloropropane 1,2.
Toluidine	Dichloropropene 1,3.
Trichlorobenzene 1,2,4.	Dimethylaniline N,N.
Trichlorophenol 2,4,6	Epichlorohydrin.
Triethylamine	Ethyl Acrylate.
	Ethylbenzene.
	Ethylene Oxide.
	Ethylene Dibromide.
	Hexachlorobutadiene.
	Hexachloroethane.
	Hexane-n.
	Methyl Isobutyl Ketone.
	Methyl Tertiary Butyl Ether.
	Methyl Ethyl Ketone, (2-butanone).
	Methyl Chloride.

TABLE 36.—COMPOUND LISTS USED FOR COMPLIANCE DEMONSTRATIONS FOR ENHANCED BIOLOGICAL TREATMENT PROCESSES (SEE § 63.145(h))—Continued

List 1	List 2
	Methylene Chloride (dichloromethane).
	Naphthalene.
	Nitropropane 2
	Phosgene.
	Propionaldehyde.
	Propylene Oxide.
	Styrene.
	Tetrachloroethane 1,1,2,2.
	ToluneTrichloroethane 1,1,1 (methyl chloroform).
	Trichloroethane 1,1,2.
	Trichloroethylene.
	Trimethylpentane 2,2,4.
	Vinyl Chloride.
	Vinyl Acetate.
	Xylene-m.
	Xylene-o.
	Xylene-p.

* * * * *

5. Section I of appendix C to part 63 is revised to read as follows:

Appendix C to Part 63—Determination of the Fraction Biodegraded (F_{bio}) in a Biological Treatment Unit

I. Purpose

The purpose of this appendix is to define the procedures for an owner or operator to use to calculate the site specific fraction of organic compounds biodegraded (F_{bio}) in a biological treatment unit. If an acceptable level of organic compounds is destroyed rather than emitted to the air or remaining in the effluent, the biological treatment unit may be used to comply with the applicable treatment requirements without the unit being covered and vented through a closed vent system to an air pollution control device.

The determination of F_{bio} shall be made on a system as it would exist under the rule. The owner or operator should anticipate changes that would occur to the wastewater flow and concentration of organics, to be treated by the biological treatment unit, as a result of enclosing the collection and treatment system as required by the rule.

The forms presented in this appendix are designed to be applied to thoroughly mixed treatment units. A thoroughly mixed treatment unit is a unit that is designed and operated to approach or achieve uniform biomass distribution and organic compound concentration throughout the aeration unit by quickly dispersing the recycled biomass and the wastewater entering the unit. Systems that are not thoroughly mixed treatment units should be subdivided into a series of zones that have uniform characteristics within each zone. The number of zones required to characterize a biological treatment system will depend on the design and operation of the treatment system. Each zone should then be modeled as a separate unit. The amount of air emissions and biodegradation from the modeling of these separate zones can then be added to reflect the entire system.

* * * * *

Appendix C [Amended]

6. Section III of appendix C of part 63, the second paragraph after (4) is revised to read as follows:

III. Procedures for Determination of f_{bio}

* * * * *

(4) * * *

* * * * *

Select one or more appropriate procedures from the four listed above based on the availability of site specific data. If the facility does not have site-specific data on the removal efficiency of its biological treatment unit, then Procedure 1 or Procedure 4 may be used. Procedure 1 allows the use of a bench top bioreactor to determine the first-order biodegradation rate constant. An owner or operator may elect to assume the first order biodegradation rate constant is zero for any regulated compound(s) present in the wastewater. Procedure 4 explains two types of batch tests which may be used to estimate the first order biodegradation rate constant. An owner or operator may elect to assume the first order biodegradation rate constant is zero for any regulated compound(s) present in the wastewater. Procedure 3 would be used if the facility has, or measures to determine, data on the inlet and outlet individual organic compound concentration for the biological treatment unit. Procedure 3 may only be used on a thoroughly mixed treatment unit. Procedure 2 is used if a facility has or obtains performance data on a biotreatment unit prior to and after addition of the microbial mass. An example where Procedure 2 could be used, is an activated sludge unit where measurements have been taken on inlet and exit concentration of organic compounds in the wastewater prior to seeding with the microbial mass and start-up of the unit. The flow chart in figure 1 outlines the steps to use for each of the procedures.

* * * * *

7. In appendix C of part 63, section III, in the second sentence of C. Inlet and Outlet Concentration Measurements (Procedure 3), the phrase ''uniform well-mixed or completely mixed system'' is revised to read ''thoroughly mixed treatment unit.''

[FR Doc. 98–32567 Filed 12–8–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300760; FRL 6046–1]

RIN 2070–AB78

Zinc phosphide; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of phosphine in or on potatoes, sugar beet (roots), and sugar beet (tops). This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on potatoes and sugarbeets. This regulation establishes a maximum permissible level for residues of phosphine in these food commodities pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerances will expire and are revoked on May 1, 2000.

DATES: This regulation is effective December 9, 1998. Objections and requests for hearings must be received by EPA on or before February 8, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300760], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300760], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300760]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9364; e-mail: pemberton.libby@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to sections 408(e) and (l)(6) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), is establishing tolerances for residues of the rodenticide zinc phosphide, in or on potatoes and sugar beets at 0.05 part per million (ppm). These tolerances will expire and are revoked on May 1, 2000. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq*., and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq* . The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996) (FRL 5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue.''

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Zinc Phosphide on Potatoes and Sugar beets and FFDCA Tolerances

Potato and sugar beet growers in Idaho have experienced substantial losses in recent years due to vole and mouse damage. The only registered option available to sugar beet and potato growers in Idaho is to use zinc phosphide on non-crop land surrounding their fields. Where fields are surrounded by other crops or bare ground, there are no registered controls or other effective non-chemical methods. EPA has authorized under FIFRA section 18 the use of zinc phosphide on potatoes and sugar beets for control of voles and mice in Idaho. After having reviewed the submission, EPA concurs that emergency conditions exist for this state.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of phosphine in or on potatoes and sugar beets. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on May 1, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on potatoes and sugar beets after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this

pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions EPA has not made any decisions about whether zinc phosphide meets EPA's registration requirements for use on potatoes and sugar beets or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of zinc phosphide by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Idaho to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for zinc phosphide, contact the Agency's Registration Division at the address provided above.

III. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the Final Rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL 5754–7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of phosphine and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of zinc phosphide on potatoes and sugar beet (roots) at 0.05 ppm and sugar beet (tops) at 0.1 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by zinc phosphide are discussed below.

1. *Acute toxicity*. No toxicology studies were identified by EPA which demonstrated the need for an acute dietary risk assessment.

2. *Short - and intermediate - term non-dietary toxicity*. Based on the acute dermal LD_{50} study in rabbits, no appropriate toxic effects were identified for risk assessment. In that study no mortalities were observed at 5,000 milligram/kilogram mg/kg. At the lowest observed effect level (LOEL) of 2,000 mg/kg, there was a decrease in body weight. Based on the physical properties of the chemical, dermal absorption is expected to be very low, since zinc phosphide reacts with water and stomach acid to produce the toxic gas phosphine from oral, but not dermal, exposure. As no endpoint of toxicological concern for dermal exposure has been identified, no dermal penetration data were required. The requirement for an acute inhalation study has been waived, thus zinc phosphide has been placed in Toxicity Category I for acute inhalation exposure.

3. *Chronic toxicity*. EPA has established the RfD for zinc phosphide at 0.001 (mg/kg/day). However, as indicated in the Reregistration Eligibility Document (RED), a chronic dietary risk assessment is not required because exposure from food sources is expected to be minimal to non-existent. There are no detectable residues in potatoes. Furthermore potatoes are often washed and cooked before they are eaten thereby further reducing any trace of residues. Residue studies showed there were detectable residues in sugar beet roots and tops; however, these commodities are not direct human foods and no dietary consumption is expected. Sugar beet tops are fed to livestock; however, there is no likelihood of residues of zinc phosphide being found through transfer of residues to meat and milk. Residues of zinc phosphide ingested by livestock would be immediately converted to phosphine and metabolized to naturally occurring phosphorus compounds. Furthermore, the Agency believes that the refining process for sugar beets will remove any unreacted zinc phosphide from refined sugar and the data requirements for a sugar beet processing study has been waived. Therefore the Agency has determined that there is no likelihood of residues of zinc phosphide occurring in any processed commodities and no chronic dietary exposure assessment is required.

4. *Carcinogenicity*. Zinc phosphide has not been classified as to its carcinogenic potential since cancer studies have been waived. Although this chemical has food uses, dietary exposure is expected to be minimal.

B. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.284) for the residues of zinc phosphide, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures and risks from zinc phosphide as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. Acute dietary endpoints were not identified; thus an acute dietary risk assessment was not performed.

ii. *Chronic exposure and risk.* For the purpose of assessing chronic dietary exposure to zinc phosphide from food, EPA assumed tolerance level residues and 100% of crop treated for potatoes, sugarbeets and all other commodities having zinc phosphide tolerances. These conservative assumptions result in over estimation of human dietary exposures.

2. *From drinking water.* The EPA Safe Drinking Water Hotline has indicated (06/97) that there are no established maximum contaminant levels (MCL) for residues of zinc phosphide in drinking water. No health advisory levels for zinc phosphide in drinking water have been established. There is no entry for zinc phosphide in the ''Pesticides in Groundwater Database'' (EPA 734–12–92–001, September 1992). Furthermore as indicated in the RED, zinc phosphide and its degradation products appear to have a low potential for ground water or surface water contamination. Therefore, dietary exposure is not expected from either ground or surface water fed drinking water and a drinking water risk assessment was not performed in the RED. Since the issuance of the RED, drinking water levels of comparison (DWLOCs) for zinc phosphide were calculated in accordance with the current Standard Operating Procedures for Drinking Water Exposure and Risk Assessments. The Agency concludes with reasonable certainty that exposure to zinc phosphide in drinking water would not result in unacceptable levels of concern.

i. *Acute exposure and risk.* Acute dietary endpoints have not been identified; therefore, a DWLOC for acute dietary exposure was not determined.

ii. *Chronic exposure and risk.* Zinc phosphide degrades rapidly to Zn^{2+} and PH_3, which sorb strongly to soil and are common nutrients in soil. Zinc

phosphide and its degradation products appear to have a low potential for ground water or surface water contamination. Therefore, EPA concludes with reasonable certainty that the residues of zinc phosphide in drinking water would not result in unacceptable levels of concern.

3. *From non-dietary exposure.* Zinc phosphide is currently registered for use on the following residential non-food sites: hand-applied bait to underground burrows in/on the following sites/settings: bulb crops, golf course turfgrass, lawns, ornamentals, nurseries, parks, homes, industrial, commercial, and agricultural buildings. Because of these residential uses, EPA has concerns about possible post-application exposures to children. A post-application exposure and risk assessment, using the method described in the draft Standard Operating Procedures (SOPs) for Residential Exposure Assessments was conducted. The margin of exposure (MOE) of 310 for post-application exposure to children at residential sites does not exceed EPA's level of concern (i.e., acceptable MOEs are ≥100). The dose estimates generated here are based on some central tendency (i.e., body weight) and some upper-percentile assumptions (i.e., ingestion rate of dry pesticide formulation, and maximum application rate) and are considered to be representative of high-end exposure. The uncertainties associated with this assessment stem from the use of an assumed ingestion rate of dry pesticide formulation. The dose estimates are considered to be reasonable high-end estimates based on professional judgement.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Although zinc phosphide may share a common mode of toxicity (the generation of phosphine gas) with other chemicals (aluminum and magnesium phosphide), the Agency has determined that any future cumulative risk determination involvling these chemicals will not include the current uses of zinc phosphide. This determination is based on the fact that exposures to phosphine from zinc phosphide in food or water are negligible due to zinc phosphide's rapid degradation and limited use patterns.

C. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* Acute dietary endpoints were not identified; thus an acute dietary risk assessment was not performed.

2. *Chronic risk.* A chronic dietary reference dose (RfD) was established for zinc phosphide at 0.0001 mg/kg/day (see Zinc Phosphide RED, 7/98). However, as indicated in the RED, a chronic dietary risk assessment is not required because exposure from food sources is expected to be minimal to non-existent. There are no detectable residues in potatoes. Furthermore potatoes are often washed and cooked before they are eaten thereby further reducing any trace of residues. Residue studies showed there were detectable residues in sugar beet (roots) and (tops); however, these commodities are not direct human foods and no dietary consumption is expected. Sugar beet (tops) are feed to livestock; however, there is no likelihood of residues of zinc phosphide being found through transfer of residues to meat and milk. Residues of zinc phosphide ingested by livestock would be immediately converted to phosphine and metabolized to naturally occurring phosphorus compounds. Furthermore, the Agency believes that the refining process or sugar beets will remove any unreacted zinc phosphide from refined sugar and the data requirements for a sugar beet processing study has been waived. Therefore the Agency has determined that there is no likelihood of residue of zinc phosphide occurring in any processed commodities and no chronic dietary exposure assessment is required.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. A short and intermediate term aggregate risk assessment is not required as a non-dietary endpoint was not identified.

4. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to zinc phosphide residues.

D. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children* — i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of zinc phosphide, EPA considered data from developmental toxicity studies in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard 100-fold factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold safety factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* In the developmental study in rats, the maternal no observed adverse effect level (NOAEL) was 2.0 mg/kg/day, based on increased mortality at the LOEL of 4.0 mg/kg/day. The developmental (fetal) NOAEL was 4.0 mg/kg/day, the highest dose tested.

iii. *Pre- and post-natal sensitivity.* The toxicological data base for evaluating pre- and post-natal toxicity for zinc phosphide is not complete. EPA is not requiring these studies because exposure from food sources is expected to be insignificant. The rat developmental toxicity data provided no indication of increased sensitivity of fetal rats to *in utero* exposure to zinc phosphide. In that study, no developmental effects were observed at the highest dose tested which was shown to be maternally toxic. An additional uncertainty factor of 10 was applied to the reference dose calculation to account for the extrapolation from subchronic to chronic exposure, the lack of reproductive toxicity data, and the lack of chronic toxicity data in a non-rodent species, this additional uncertainty factor will accomodate the inability to assess the potential for increased sensitivity of infants and children, because of the lack of animal data.

2. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to zinc phosphide residues.

IV. Other Considerations

A. Metabolism In Plants and Animals

The residue of concern is zinc phosphide *per se*, measured as phosphine. There is no expectation of secondary residues in meat, milk, poultry, and eggs as a result of the registered zinc phosphide uses .

B. Analytical Enforcement Methodology

Adequate analytical methodology (spectrophotometric) is available in PAM II (Sec. 180.284, Method A) to enforce the tolerance expression. The method determines zinc phosphide residues as phosphine gas.

C. Magnitude of Residues

Residues of phosphine resulting from the proposed use of zinc phosphide are not expected to exceed 0.05 ppm in potatoes, 0.05 ppm in sugar beet (roots), and 0.1 ppm in sugar beet (tops). Concentration of residues in potato and sugar beet processing by-products is not expected. There is no reasonable expectation of secondary residues in meat, milk, poultry, or eggs.

D. International Residue Limits

No Codex, Canadian or Mexican Maximum Residue Levels have been established for zinc phosphide.

V. Conclusion

Therefore, the tolerances are established for residues of zinc phosphide in potatoes and sugar beet (roots) at 0.05 ppm and sugar beet (tops) at 0.1 ppm.

VI. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by February 8, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VII. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300760] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C) Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

VIII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes tolerances under FFDCA section 408 (l)(6). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established under FFDCA section 408 (l)(6), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the

Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance acations published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (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 rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule 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 rule.

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 to 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 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.''

Today's rule 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 rule.

IX. 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. 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 the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 24, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180 — [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In §180.284, in paragraph (b), by alphabetically adding the following commodities to the table to read as follows:

§180.284 Zinc phosphide; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/Revocation Date
* * *	* * * *	
Potatoes	0.05	5/1/00
* * *	* * * *	
Sugar beet (roots)	0.05	5/1/00
Sugar beet (tops)	0.1	5/1/00
* * *	* * * *	

* * * * *

[FR Doc. 98–32574 Filed 12–8–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6198–9]

Oklahoma: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The State of Oklahoma has applied for final authorization to revise its Hazardous Waste Program under the Resource Conservation and Recovery Act (RCRA). The EPA has reviewed Oklahoma Department of Environmental Quality's (ODEQ) application and determined that its Hazardous Waste Program revision satisfies all of the requirements necessary to qualify for final authorization. Unless adverse written comments are received on this action, EPA's decision to approve Oklahoma's Hazardous Waste Program Revision will take effect as provided below in accordance with Hazardous and Solid Waste Amendments of 1984 (HSWA).

DATES: This immediate final rule is effective on February 8, 1999 without further notice, unless EPA receives adverse comments by January 8, 1999. Should the EPA receive such comments, it will publish a timely withdrawal of this Immediate Final Rule in the **Federal Register** and inform the public that the rule will not take effect.

Written comments, referring to Docket Number OK–98–3, should be sent to Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202, phone (214) 665–8533.

ADDRESSES: Copies of the Oklahoma program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying from 8:30 a.m. to 4:00 p.m. Monday through Friday at the following addresses: State of Oklahoma Department of Environmental Quality, 1000 Northeast Tenth Street, Oklahoma City, Oklahoma 73117–1212, phone (405) 271–5338 and EPA, Region 6 Library, 12th Floor, 1445 Ross Avenue, Dallas, Texas 65202, phone (214) 665–6444.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202, phone (214) 665–8533.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the RCRA, 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 Code of Federal Regulations (CFR) parts 124, 260–264, 265, 266, 268, 270, 273 and 279.

B. Oklahoma

Oklahoma initially received Final Authorization on January 10, 1985, (49 FR 50362) to implement its base hazardous waste management program. Oklahoma received authorization for revisions to its program on June 18, 1990 (55 FR 14280), effective November 27, 1990 (55 FR 39274), effective June 3, 1991 (56 FR 13411), effective November 19, 1991 (56 FR 47675), effective December 21, 1994 (59 FR 51116–51122), effective April 27, 1995 (60 FR 2699–2702), effective October 9, 1996 (61 FR 52884–52886), and Technical Correction effective March 14, 1997 (62 FR 12100). The authorized Oklahoma RCRA program was incorporated by reference into the CFR effective December 13, 1993 and July 14, 1998. On July 31, 1998, Oklahoma submitted a final complete program revision application for additional program approvals. The State of Oklahoma has also adopted the regulations for Import and Export of Hazardous Waste. However, the requirements of the Import and Export regulations will be administered by the EPA and not the State because the exercise of foreign relations and international commerce powers is reserved to the Federal government under the United States Constitution. Therefore, the State is not seeking authorization for this rule. Today, Oklahoma is seeking approval of its program revision in accordance with § 271.21(b)(3).

Oklahoma statutes provide authority for a single State agency, the ODEQ, to administer the provisions of the State Hazardous Waste Management Program. These statutes are the Oklahoma Environmental Quality Act, 27 O.S. Supplement (Supp) 1997 sections 1–1–101 *et seq.* General provisions of the Oklahoma Environmental Quality Code which may affect the Hazardous Waste Program, 27A O.S. Supp. 1997 sections 2–1–101 through 2–3–507; and the Oklahoma Hazardous Waste Management Act (OHWMA), 27A O.S. Supp. 1997 sections 2–7–101 *et seq.* No amendments were made to the above statutory authorities during the 1997 legislative session which will substantially affect the State Hazardous Waste Management Program; however, 27A O.S. sections 2–14–305 has been added to allow for issuance of general permits.

On January 8, 1998, the Council voted to recommend amendments to Oklahoma Administrative Code (OAC) 252:200–3–1 and 252:200:3–2 to incorporate by reference, in accordance with Guidelines For State Adoption of Federal Regulations by Reference, the following EPA Hazardous Waste Management Regulations as amended through July 1, 1997: the provisions of 40 CFR part 124 which are required by 40 CFR 271.14 as well as 124.31, 124.32 and 124.33; 40 CFR parts 260–266, with the exception of 40 CFR 260.20 through 260.22, 40 CFR part 268, 40 CFR part 270, 40 CFR part 273 and 40 CFR part 279. The Board adopted these amendments on January 27, 1998 as permanent and emergency rules. The emergency rules amendments became effective as permanent rules on June 1, 1998. The ODEQ remains the official agency of the State of Oklahoma, as designated by 27A O.S. Supp. 1997 sections 2–7–105(13) to cooperate with Federal agencies for the purposes of hazardous waste regulations. The OHWMA delegates authority to the ODEQ to administer the State Hazardous Waste Program, including the statutory and regulatory provisions necessary to administer the RCRA Cluster VI requirements.

The EPA reviewed ODEQ's application, and today is making an immediate final decision, subject to public review and comment, that ODEQ's Hazardous Waste Program revisions satisfies all of the requirements necessary to qualify for final authorization. Consequently, the EPA intends to grant final authorization for the additional program modifications to Oklahoma. The public may submit written comments on EPA's final decision until January 8, 1999. Copies of Oklahoma's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this document.

Approval of ODEQ's program revision shall became effective 60 days from the date this document is published, unless an adverse written comment pertaining

to the State's revision discussed in this document is received by the end of the comment period. If an adverse written comment is received, the EPA will publish either, (1) a withdrawal of the immediate final decision, or (2) a document containing a response to the comment that either affirms that the immediate final decision takes effect or reverses the decision.

The ODEQ's program revision application includes State regulatory changes that are equivalent to the rules promulgated in the Federal RCRA implementing regulations in 40 CFR parts 124, 260–263, 264, 265, 266, 270, 273, and 279, that were published in the FR from July 1, 1995 through June 30, 1996. This proposed approval includes the provisions that are listed in the chart below. This chart also lists the State analogs that are being recognized as equivalent to the appropriate Federal requirements.

Federal citation	State analog
1. Hazardous Waste Management; Liquids in Landfills, [60 FR 35703] July 11, 1995 (Checklist 145).	OAC 27A Oklahoma Statutes (O.S.), Supp. 1997, § 2–2–104 laws added 1994, effective July 1, 1994; §§ 2–7–106, amended 1993, and 2–7–107(A)(10), effective July 1, 1993. OHWMA, as amended, 252:200–3–1, through 252:200–3–4, amended January 27, 1998, emergency rule effective March 23, 1998, permanent rule effective June 1, 1998.
2. RCRA Expanded Public Participation, [60 FR 63417] December 11, 1995 (Checklist 148).	OAC 27A O.S., Supp. 1997, §§ 2–7–104 added 1994, effective July 1, 1994; 27A O.S. Supp. 1996 § 2–7–106, and § 2–7–105(15), effective July 1, 1993; OHWMA Rules 252:200–3–1 through 252:200–3–4, amended January 27, 1998, emergency effective date March 23,1998, permanent rule effective June 1, 1998.
3. Identification and Listing of Hazardous Waste; Amendments to Definition of Solid Waste, [61 FR 13103], March 26, 1996. (Checklist 150).	OAC 27A O.S., Supp. 1997, §§ 2–7–106 amended 1993, effective July 1, 1993; and § 2–7–104, added by Laws 1994, effective July 1, 1994; OHWMA Rules 252:200–3–1 through 252:200–3–4, amended January 27, 1998, emergency effective date March 23, 1998, permanent effective June 1, 1998.
4. Land Disposal Restrictions Phase III-Deharacterized Wastewaters, Carbamate Waste, and Spent Potliners, [61 FR 15660] April 8, 1996, [61 FR 19117] April 30, 1996 [61FR 33680], June 28, 1996, [61 FR 36419], July 10, 1996, [61 FR 43924], April 26, 1996, and [62 FR 7502] February 19, 1997, (Checklist 151.1, 151.2, 151.3, 151.4, 151.5 and 151.6).	OAC 27A O.S., Supp. 1996, §§ 2–7–106 amended 1993, effective July 1, 1993; § 2–7–104, Added by Laws 1994 and § 2–7–106, effective July 1, 1994; OHWMA Rules 252:200–3–1 through 252:200–3–4, amended June 18, 1996, emergency effective date August 1, 1996, permanent effective June 1, 1997; 252:200–3–5, and 252:200–3–6, Finally adopted March 30, 1994, effective as permanent May 26, 1994.

Oklahoma is not authorized to operate the Federal program on Indian lands. This authority remains with EPA.

C. Decision

I conclude that ODEQ's application for a program revision meets the statutory and regulatory requirements established by RCRA. Accordingly, ODEQ is granted Final Authorization to operate its hazardous waste program as revised. Upon effective final approval Oklahoma will be responsible for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Oklahoma 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. Codification in Part 272

The EPA uses 40 CFR part 272 for codification of the decision to authorize ODEQ's program and for incorporation by reference of those provisions of its statutes and regulations that EPA will enforce under sections 3008, 3013, and 7003 of RCRA. Therefore, EPA is reserving amendment of 40 CFR part 272, subpart LL until a later date.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law (Pub. 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.

The EPA has determined that sections 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 already exist under the State of Oklahoma's program, and today's action does not impose any additional obligations on regulated entities. In fact, the 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 sections 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 of hazardous waste, treatments, storage or disposal facilities (TSDFs), they are already subject to the regulatory requirements under the existing State laws that are being authorized by the EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

F. 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 the EPA. The EPA's authorization does not impose any significant additional burdens on these small entities. This is because the 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.

G. 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 submitted a report containing this rule and other required information to the U.S. Senate, the U. S. House of Representatives and the Comptroller General of the 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).

H. Regulatory Review Under Executive Order 12866

The Office of Management and Budget (OMB) has exempted this rule from the requirements of section 3 of Executive Order 12866.

I. Protection of Children From Environmental Health Risk and Safety risks Under Executive Order 13045

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risk'' applies to any rule that: (1) the OMB determines is ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the 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.

J. Enhancing Intergovernmental Partnership Under Executive Order 12875

Under Executive Order 12875, the EPA may not issue 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, the EPA must provide to the 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 the 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. Accordingly, the requirements of section 1 (a) of Executive Order 12875 do not apply to this rule.

K. Consultation and Coordination With Indian Tribal Governments Under Executive Order 13084

Under Executive Order 13084, the EPA may not issue a regulation that is not require 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 cost incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires the EPA to provide the 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, summary of the nature of their concerns, and a statement supporting the need to issue the regulations. 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.''

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.

L. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs the 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 the 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, the EPA did not consider the use of any voluntary consensus standards.

Paper 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 required community.

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 recordkeeping 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, 6974(b).

Jerry Clifford,

Deputy Regional Administrator, Region 6.

[FR Doc. 98–32575 Filed 12–8–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Part 206

[DFARS Case 97–D324]

Defense Federal Acquisition Regulation Supplement; Competition Exception for International Agreements

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 841(b) of the National Defense Authorization Act for Fiscal Year 1998. Section 841(b) repeals the requirement for the competition advocate to approve documentation prepared by the head of the contracting activity, for use of other than competitive procedures, when the terms of an international agreement have the effect of requiring such procedures.

EFFECTIVE DATE: December 9, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Rider, Defense Acquisition Regulations Council, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131; telefax (703) 602–0350. Please cite DFARS Case 97–D324.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule revises DFARS 206.302–4 to implement Section 841(b) of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85). Section 841(b) amends 10 U.S.C. 2304(f)(2)(E) to repeal the requirement for the competition advocate to approve documentation supporting the use of other than competitive procedures for an acquisition, when the use of such procedures is based upon the terms of an international agreement.

B. Regulatory Flexibility Act

The final rule does not constitute a significant revision within the meaning of FAR 1.501 and Pub. L. 98–577 and publication of public comment is not required. However, comments from small entities concerning the affected DFARS subpart will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 97–D324.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 206

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 206 is amended as follows:

1. The authority citation for 48 CFR Part 206 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 206—COMPETITION REQUIREMENTS

2. Section 206.302–4 is revised to read as follows:

206.302–4 International agreement.

(c) *Limitations.* Pursuant to 10 U.S.C. 2304(f)(2)(E), the justifications and approvals described in FAR 6.303 and 6.304 are not required if the head of the contracting activity prepares a document that describes the terms of an agreement or treaty or the written directions, such as a Letter of Offer and Acceptance, that have the effect of requiring the use of other than competitive procedures for the acquisition.

[FR Doc. 98–32582 Filed 12–8–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Part 217

[DFARS Case 97–D319]

Defense Federal Acquisition Regulation Supplement; Waiver Authority to Support Humanitarian or Peacekeeping Operations

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 803 of the National Defense Authorization Act for Fiscal Year 1998. Section 803 permits the head of an agency to waive certain limitations on the use of undefinitized contract actions, if the waiver is necessary to support a humanitarian or peacekeeping operation.

EFFECTIVE DATE: December 9, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Rider, Defense Acquisition Regulations Council, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131; telefax (703) 602–0350. Please cite DFARS Case 97–D319.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DFARS 217.7404–5 to implement Section 803 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85). Section 803 amends the limitations at 10 U.S.C. 2326(b)(4) pertaining to the use of undefinitized contract actions. Editorial changes are made at 217.7404–3.

B. Regulatory Flexibility Act

The final rule does not constitute a significant revision within the meaning of FAR 1.501 and Pub. L. 98–577 and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subpart will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 97–D319.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 217

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 217 is amended as follows:

1. The authority citation for 48 CFR Part 217 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 217—SPECIAL CONTRACTING METHODS

2. Section 217.7404–3 is amended by revising paragraph (a) introductory text and paragraph (a)(1) to read as follows:

217.7404–3 Definitization schedule.

(a) UCAs shall contain definitization schedules that provide for definitization by the earlier of—

(1) The date that is 180 days after issuance of the action (this date may be extended but may not exceed the date that is 180 days after the contractor submits a qualifying proposal); or

* * * * *

3. Section 217.7404–5 is amended by revising paragraph (b) to read as follows:

217.7404–5 Exceptions.

* * * * *

(b) The head of an agency may waive the limitations in 217.7404–2, 217.7404–3, and 217.7404–4 for UCAs if the head of the agency determines that the waiver is necessary to support—

(1) A contingency operation as defined in 10 U.S.C. 101(a)(13); or

(2) A humanitarian or peacekeeping operation as defined in 10 U.S.C. 2302(7).

[FR Doc. 98–32583 Filed 12–8–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Parts 223 and 252

[DFARS Case 98–D301]

Defense Federal Acquisition Regulation Supplement; Hazardous Waste Disposal

AGENCY: Department of Defense (DoD.)

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove guidance pertaining to contracts for the offsite treatment or disposal of hazardous waste from defense facilities. The statute upon which this guidance was based applies only to contracts entered into during fiscal years 1992 through 1996.

EFFECTIVE DATE: December 9, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Pelkey, Defense Acquisition Regulations Council, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131; telefax (703) 602–0350. Please cite DFARS Case 98–D301.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule removes DFARS Subpart 223.70 and the clause at DFARS 252.223–7005, which implemented 10 U.S.C. 2708, Contracts for handling hazardous waste from defense facilities. 10 U.S.C. 2708 applies only to contracts entered into during fiscal years 1992 through 1996.

B. Regulatory Flexibility Act

The final rule does not constitute a significant revision within the meaning of FAR 1.501 and Pub. L. 98–577 and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subpart will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 98–D301.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 223 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 223 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 223 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 223—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

Subpart 223.70—[Removed and Reserved]

2. Subpart 223.70 is removed and reserved.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.223–7005 [Removed and Reserved]

3. Section 252.223–7005 is removed and reserved.

[FR Doc. 98–32584 Filed 12–8–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Part 237

[DFARS Case 97–D328]

Defense Federal Acquisition Regulation Supplement; Service Contracts that Cross Fiscal Years

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove obsolete guidance pertaining to service contracts that cross fiscal years. Section 801 of the National Defense Authorization Act for Fiscal Year 1998 expanded the statutory authority to enter into such contracts. Federal Acquisition Circular 97–09, dated October 30, 1998, incorporated current guidance on this subject into the Federal Acquisition Regulation.

EFFECTIVE DATE: December 9, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Pelkey, Defense Acquisition Regulations Council, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131; telefax (703) 602–0350. Please cite DFARS Case 97–D328.

SUPPLEMENTARY INFORMATION:

A. Background

Section 801 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85) amended 10 U.S.C. 2410a to expand the authority pertaining to service contracts that cross fiscal years. Item VIII of Federal Acquisition Circular 97–09 (63 FR 58600, October 30, 1998) amended the Federal Acquisition Regulation to implement Section 801. This final rule revises DFARS 237.106 to remove obsolete guidance pertaining to service contracts that cross fiscal years.

B. Regulatory Flexibility Act

The final rule does not constitute a significant revision within the meaning of FAR 1.501 and Pub. L. 98–577 and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subpart will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 97–D328.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 237

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 237 is amended as follows:

1. The authority citation for 48 CFR Part 237 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 237—SERVICE CONTRACTING

2. Section 237.106 is revised to read as follows:

237.106 Funding and term of service contracts.

Personal service contracts for expert or consultant services shall not exceed 1 year. The nature of the duties must be—

(1) Temporary (not more than 1 year); or

(2) Intermittent (not cumulatively more than 130 days in 1 year).

[FR Doc. 98–32585 Filed 12–8–98; 8:45 am]

BILLING CODE 5000–04–M

Proposed Rules

Federal Register
Vol. 63, No. 236
Wednesday, December 9, 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

Commodity Credit Corporation

7 CFR Part 1427

RIN 0560–AF32

Upland Cotton User Marketing Certificate Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 1998 (Pub. L. 105–86) and the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub. L. 105–277) made changes to the Upland Cotton User Marketing Certificate Program. Accordingly, the regulations are revised to conform to the statute and to indicate that, beginning October 1, 1998, payments will be offered under different circumstances from those in effect prior to that date. Obsolete and unnecessary language in the regulations also will be deleted.

DATES: Comments on the proposed rule, as well as comments on alternatives to this proposal, must be received on or before January 8, 1999 to be assured of consideration. Comments on the information collections in this rule must be received on or before February 8, 1999 to be assured of consideration.

ADDRESSES: Submit comments on the proposed rule to: Director of Fibers Analysis (FA), Farm Service Agency (FSA), U.S. Department of Agriculture (USDA), 1400 Independence Avenue, SW, STOP 0515, Washington, DC 20250–0515. E-mail comments may be sent to wayne__bjorlie@wdc.fsa.usda.gov.

FOR FURTHER INFORMATION CONTACT: Wayne Bjorlie, Director, FA, FSA, USDA, Room 3758–S, STOP 0515, 1400 Independence Avenue, SW, Washington, DC 20250–0515 or call (202) 720–7954. A cost benefit assessment of this proposed rule is available on request. E-mail inquiries also are welcome. Please address them to: wayne__bjorlie@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule because the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Federal Assistance Program

The titles and numbers of the Federal Assistance Programs, as found in the catalog of Federal Domestic Assistance, to which this proposed rule applies are: Commodity Loans and Purchases—10.051 and Cotton Production Stabilization—10.052.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. The provisions of the rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The amendments to 7 CFR part 1427 set forth in this proposed rule involve a change in the existing information collection requirements which were previously cleared by OMB under the provisions of 44 U.S.C. 35. In accordance with the Paperwork Reduction Act of 1995, CCC has submitted a request to OMB for a revision to an information collection currently approved in support of the upland cotton user marketing certificate program and related reporting and record keeping requirements.

Title: Upland Cotton Domestic User/Exporter Agreement and Payment Program.

OMB Control Number: 0560–0136.

Expiration Date of Approval: April 30, 2000.

Type of Request: Revision of a Currently-Approved Information Collection.

Abstract: Section 136 of the Federal Agriculture Improvement and Reform Act of 1996, Pub. L. 104–127 (1996 Act), authorizes payments to eligible U.S. domestic users and exporters under the upland cotton user marketing certificate program if, for 4 consecutive weeks, (1) the U.S. Northern Europe price exceeds the Northern Europe price by more than 1.25 cents per pound, and (2) the upland cotton adjusted world price is less than 130 percent of the current-crop base quality loan rate. The 1996 Act further specifies that the certificates will not be available in a week following a consecutive 10-week period in which the U.S. Northern Europe price, adjusted downward for any marketing certificate payment rate in effect, exceeds the Northern Europe price by more than 1.25 cents per pound.

Currently, to participate in the program, domestic users and exporters must sign the Upland Cotton Domestic User/Exporter Agreement (CCC–1045) with CCC. Domestic users must agree to report weekly to CCC their consumption of cotton. Exporters report to CCC their shipments of cotton only during weeks in which a payment is available. CCC provides a suggested format for the reports, but program participants may submit the same information to CCC in a format that is convenient for participants.

Pub. L. 105–86, enacted on November 18, 1997, changed the percentage in criterion (2) above from 130 percent to 134 percent, effective October 1, 1998. Pub. L. 105–86 also repealed the provision that stops certificate payments after the consecutive 10-week period referred to above.

Pub. L. 105–277, enacted on October 21, 1998, changed the threshold for the price triggers from 1.25 cents to 3.00 cents.

The operational implication of these changes is that the user marketing certificate payment program may operate more frequently and for longer periods of time. The payment rate will be 1.75 cents per pound less than the level without the change in the threshold. In claiming payments for cotton consumed or shipped, domestic users and exporters may face additional reporting requirements during periods in which, under the former rules, the program would not have operated. However, because the total of funds to be expended on the payments is fixed by law, no net addition to reporting requirements over the life of the program is anticipated for either domestic users or exporters as a result of this rule.

Estimate of Burden: Public reporting burden for this information collection is estimated to average 12 minutes per response.

Respondents: U.S. cotton exporters and U.S. domestic users of cotton.

Estimated Number of Respondents: 240.

Estimated Number of Responses per Respondent: 36.

Estimated Total Annual Burden on Respondents: 1,940 hours.

Proposed topics for comment on the information collection include: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on 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. Copies of the information collection may be obtained from Steve Gill at the address below.

Submit comments on the information collection to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Steve Gill, Director, Warehouse and Inventory Division, FSA, USDA, Room 5968–S, STOP 0553, Washington, DC 20250–0553. Comments may be submitted by e-mail to: steve__gill@wdc.fsa.usda.gov. All comments regarding this information collection will be summarized and included in the request for OMB approval. All comments will also become public records.

OMB is required to make a decision concerning the collection(s) of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Background

This proposed rule would amend the regulations to accomplish four distinct objectives with regard to the administration of the upland cotton user marketing certificate program.

1. Changes to the regulations for the user marketing certificate program are necessitated by statutory changes made by Section 731 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 1998 (1998 Agriculture Appropriation Act, Pub. L. 105–86) and by Section 762 of the Omnibus Consolidated and Emergency Appropriations Act, 1999 (Pub. L. 105–277). Both the 1998 and 1999 Agriculture Appropriation Acts amended the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act) to change the requisite conditions in the cotton market under which certificates must be made available. The 1996 Act requires that user marketing certificates be made available to domestic users and exporters for raw upland cotton grown in the United States and consumed or exported after four consecutive weeks during which the U.S. price quotation for upland cotton, including cost, insurance, and freight (C.I.F.), delivered in northern Europe, exceeds the average quotation for the five cheapest growths of upland-style cotton quoted for delivery, C.I.F. northern Europe, by 1.25 cents per pound.

If marketing certificates are being made available, the 1996 Act provides for two market circumstances under either of which the availability of such certificates is interrupted:

A. The adjusted world price (AWP) at which upland cotton marketing loan repayments are made rises to a level in excess of 130 percent of the current loan rate; or

B. A period of ten consecutive weeks passes in which the U.S. price quotation for upland cotton, delivered C.I.F. northern Europe, adjusted downward for any marketing certificate rate in effect, exceeds the average quotation for the five cheapest growths of upland-style cotton quoted for delivery C.I.F. northern Europe by 1.25 cents per pound.

Effective October 1, 1998, the 1998 Agriculture Appropriation Act changed these two circumstances. Effective October 23, 1998, the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 changed the price trigger thresholds. Together, these two Acts provide that:

A. User marketing certificates will not be made available if the AWP exceeds 134 percent of the current loan rate; and

B. The Secretary will continue to issue user marketing certificates despite the passage of 10 consecutive weeks during which the U.S. price quotation for upland cotton, delivered C.I.F. northern Europe, adjusted downward for any marketing certificate rate in effect, exceeded the average quotation for the five cheapest growths of upland-style cotton quoted for delivery, C.I.F. northern Europe, by 3.00 cents per pound.

2. About mid-April, each year, price quotations for both the old- (current-) and new- (forward-) crop marketing years become available and are usually published concurrently until the end of the marketing year on August 1. Given the parallel sets of price data, administration of the user marketing certificate program requires a procedure to effect the transition from the old crop to the new crop.

On August 7, 1997, USDA established a transition procedure with respect to the weekly determination as to whether the requisite period of ten consecutive weeks has passed in which U.S. price quotations, C.I.F. northern Europe, have been non-competitive, as referred to above. Under this transition procedure, current-crop price quotations are considered for the 9-week period prior to the first Thursday after July 31 to determine whether each week's data should be counted toward the ten consecutive weeks the passage of which would make user marketing certificates unavailable or cause special import quotas to be opened. The proposed rule sets forth an end-of-year transition procedure for the determination of the 10-week period which is identical to the procedure USDA established on August 7, 1997.

3. Current regulations require, at the end-of-year transition period, that price quotations for the forward crop be considered for the 3 weeks prior to the first Thursday after July 31 to determine whether 4 consecutive qualifying weeks have passed that would require user

marketing certificate payments to be made available. This procedure is inconsistent with the procedure being proposed for the determination regarding the 10-week period. Therefore, the proposed rule will attain consistency by proposing that current-crop price quotations from the weeks prior to the first Thursday after July 31 be used both for the 4-week and the 10-week determinations.

4. Current regulations contain language that was made obsolete by regulatory revisions on July 12, 1996, and applies only to situations which have passed and cannot recur. The language remained following the regulatory revisions so that prior existing claims under the user marketing certificate program could be handled. There is no further need for this language, so it is proposed to be deleted from the regulations.

The upland cotton user marketing certificate program is conducted on a nondiscriminatory basis without regard to race, color, religion, national origin, age, sex, marital status or handicap.

List of Subjects in 7 CFR Part 1427

Cotton, Loan programs/agriculture, Marketing certificate programs, Price support programs, Warehouses.

Accordingly, 7 CFR part 1427 is proposed to be amended as follows:

PART 1427—COTTON

1. The authority citation for 7 CFR part 1427 is revised to read as follows:

Authority: 7 U.S.C. 7236 and 15 U.S.C. 714b and 714c.

2. Section 1427.100 is amended by revising the text of paragraphs (b)(1), (b)(2), and (b)(3) and by adding new paragraphs (b)(4) and (b)(5), to read as follows:

§ 1427.100 Applicability.

* * * * *

(b)(1) During the period beginning August 1, 1991, and ending September 30, 1998, CCC shall issue marketing certificates or cash payments to domestic users and exporters in accordance with this subpart in a week following a consecutive 4-week period in which—

(i) The Friday through Thursday average price quotation for the lowest-priced United States growth, as quoted for Middling one and three thirty-seconds inch (''M 1 3/32 inch'') cotton, delivered C.I.F. (cost, insurance and freight) northern Europe, (''U.S. Northern Europe (USNE) price'') exceeds the Friday through Thursday average price quotation for the five lowest-priced growths, as quoted for M 1 3/32 inch cotton, delivered C.I.F. northern Europe, (''Northern Europe (NE) price'') by more than 1.25 cents per pound; and

(ii) The adjusted world price (AWP) for upland cotton, determined in accordance with § 1427.25, does not exceed 130 percent of the current crop loan level for the base quality of upland cotton.

(2) Beginning August 1, 1991, and ending September 30, 1998, notwithstanding the provisions of paragraph (b)(1) of this section, CCC shall not issue marketing certificates or cash payments if, for the immediately preceding consecutive 10-week period, the USNE price, adjusted for the value of any certificates or cash payments issued under paragraph (b)(1) of this section, exceeds the NE price by more than 1.25 cents per pound.

(3) Beginning October 1, 1998, and ending October 22, 1998, CCC shall issue marketing certificates or cash payments to domestic users and exporters in accordance with this subpart in a week following a consecutive 4-week period in which:

(i) The Friday through Thursday average USNE price exceeds the Friday through Thursday average NE price by more than 1.25 cents per pound; and

(ii) The AWP for upland cotton does not exceed 134 percent of the current crop loan level for the base quality of upland cotton.

(4) Beginning October 23, 1998, and ending July 31, 2003, CCC shall issue marketing certificates or cash payments to domestic users and exporters in accordance with this subpart in a week following a consecutive 4-week period in which:

(i) The Friday through Thursday average USNE price exceeds the Friday through Thursday average NE price by more than 3.00 cents per pound; and

(ii) The AWP for upland cotton does not exceed 134 percent of the current crop loan level for the base quality of upland cotton.

(5) Notwithstanding the provisions of this subpart, user marketing certificate program payments shall not exceed $701,000,000 during fiscal years 1996 through 2002. Any outstanding obligations incurred by CCC to exporters under this program before April 5, 1996, will not be subject to the $701,000,000 limitation. Obligations incurred by CCC under this program on or after April 5, 1996, will be charged against the $701,000,000.

* * * * *

3. Section 1427.102 is amended by removing the definition of ''optional origin export contract.''

4. Section 1427.103 is amended by revising paragraph (a) to read as follows:

§ 1427.103 Eligible upland cotton.

(a) For purposes of this subpart, eligible upland cotton is domestically produced baled upland cotton which bale is opened by an eligible domestic user on or after August 1, 1991, and on or before July 31, 2003, or exported by an eligible exporter on or after July 18, 1996, and on or before July 31, 2003, during a Friday through Thursday period in which a payment rate, determined in accordance with § 1427.107, is in effect, and which meets the requirements of paragraphs (b) and (c) of this section.

* * * * *

5. Section 1427.105 is amended by revising paragraph (b) to read as follows:

§ 1427.105 Upland Cotton Domestic User/Export Agreement.

* * * * *

(b) Upland Cotton Domestic User/Exporter Agreements may be obtained from Cotton and Rice Branch, Warehouse Contract Division, Kansas City Commodity Office, P.O. Box 419205, Kansas City, Missouri 64141–6205. Telephone requests for copies of the agreement will be accepted at (816) 926–6662. In order to participate in the program authorized by this subpart, domestic users and exporters must execute the Upland Cotton Domestic User/Exporter Agreement and forward the original and two copies to KCCO.

6. Section 1427.107 is amended by removing paragraphs (f) through (g), by revising paragraphs (a)(1),(a)(2), and (b) through (e), and by adding paragraph (a)(3), to read as follows:

§ 1427.107 Payment rate.

(a) * * *

(1) Beginning August 1, 1991, and ending September 30, 1998, for exporters for cotton shipped on or after July 18, 1996, and for domestic users:

(i) Beginning the Friday following August 1 and ending the week in which the Northern Europe current (NEc) price and the Northern Europe forward (NEf) price first become available, the payment rate shall be the difference between the USNE price, minus 1.25 cents per pound, and the NE price in the fourth week of a consecutive 4-week period in which the USNE price exceeded the NE price each week by more than 1.25 cents per pound, and the AWP did not exceed the current crop-year loan level for the base quality of upland cotton by more than 130 percent; and

(ii) Beginning the Friday through Thursday week after the week in which

the NEc price and the NEf price first become available and ending the Thursday following July 31, the payment rate shall be the difference between the USNEc price, minus 1.25 cents per pound, and the NEc price in the fourth week of a consecutive 4-week period in which the USNEc price exceeded the NEc price each week by more than 1.25 cents per pound, and the AWP did not exceed the current crop-year loan level for the base quality of upland cotton by more than 130 percent. If either or both the USNEc price and the NEc price are not available, the payment rate may be the difference between the USNEf price, minus 1.25 cents per pound, and the NEf price.

(2) Beginning October 1, 1998, and ending October 22, 1998, for exporters and for domestic users, the payment rate shall be the difference between the USNE price, minus 1.25 cents per pound, and the NE price in the fourth week of a consecutive 4-week period in which the USNE price exceeded the NE price each week by more than 1.25 cents per pound, and the AWP did not exceed the current crop-year loan level for the base quality of upland cotton by more than 134 percent.

(3) Beginning October 23, 1998, and ending July 31, 2003, for exporters and for domestic users:

(i) Beginning the Friday following August 1 and ending the week in which the NEc price and the NEf price first become available, the payment rate shall be the difference between the USNE price, minus 3.00 cents per pound, and the NE price in the fourth week of a consecutive 4-week period in which the USNE price exceeded the NE price each week by more than 3.00 cents per pound, and the AWP did not exceed the current crop-year loan level for the base quality of upland cotton by more than 134 percent; and

(ii) Beginning the Friday through Thursday week after the week in which the NEc price and the NEf price first become available and ending the Thursday following July 31, the payment rate shall be the difference between the USNEc price, minus 3.00 cents per pound, and the NEc price in the fourth week of a consecutive 4-week period in which the USNEc price exceeded the NEc price each week by more than 3.00 cents per pound, and the AWP did not exceed the current crop-year loan level for the base quality of upland cotton by more than 134 percent. If either or both the USNEc price and the NEc price are not available, the payment rate may be the difference between the USNEf price, minus 3.00 cents per pound, and the NEf price.

(b) Beginning August 1, 1991 and ending September 30, 1998, notwithstanding the provisions of paragraph (a) of this section, no payment rate shall be established in a week following a consecutive 10-week period in which the USNE price, adjusted for the value of any certificate or cash payment issued in accordance with paragraph (a) of this section, exceeds the NE price by more than 1.25 cents per pound.

(c) Whenever a 4-week period under paragraph (a) of this section or a 10-week period under paragraph (b) of this section contains a combination of NE prices only for 1 to 3 weeks, or for 1 to 9 weeks, and NEc prices and NEf prices only for 1 to 3 weeks, or for 1 to 9 weeks, such as occurs in the spring when the NE price is succeeded by the NEc price and the NEf price (''spring transition'') and at the start of a new marketing year when the NEc price and the NEf price are succeeded by the NE price (''marketing year transition''), under paragraphs (a) and (b) of this section, during both the spring transition and the marketing year transition periods, to the extent practicable, the NEc price and the USNEc price in combination with the NE price and the USNE price shall be taken into consideration during such 4-week periods and such 10-week periods to determine whether a payment is to be issued. During both the spring transition and the marketing year transition periods, if either or both the USNEc price and the NEc price are not available, the USNEf price and the NEf price in combination with the USNE price and the NE price shall be taken into consideration during such 4-week periods and such 10-week periods to determine whether a payment is to be issued.

(d) For purposes of this subpart—

(1) With respect to the determination of the USNE price, the USNEc price, the USNEf price, the NE price, the NEc price, and the NEf price:

(i) If daily quotations are not available for one or any day of the 5-day period, the available quotations during the period will be used;

(ii) CCC will not take into consideration a week in which no daily quotes are available for the entire 5-day period for either or both the USNE price and the NE price during the period when only one daily price quotation is available for each growth quoted for M 1–3/32 inch cotton, delivered C.I.F. northern Europe, or the USNEc price and the NEc price, or the USNEf price and the NEf price. In that case, CCC may establish a payment rate at a level it determines to be appropriate, taking into consideration the payment rate determined in accordance with paragraph (a) of this section for the most recent available week; and

(iii) Beginning July 18, 1996, if no daily quotes are available for the entire 5-day period for either or both the USNEc and the NEc price, the marketing year transition shall be implemented immediately as provided for in paragraph (c) of this section.

(2) With respect to the determination of the USNE price, the USNEc price, and the USNEf price, if a quotation for either the U.S. Memphis territory or the California/Arizona territory as quoted for M 1–3/32 inch cotton, delivered C.I.F. northern Europe, is not available for each day or any day of the 5-day period, the available quotation(s) will be used.

(e) Payment rates for loose, reginned motes and semi-processed motes that are of a quality suitable, without further processing, for spinning, papermaking or bleaching shall be based on a percentage of the basic rate for baled lint, as specified in the Upland Cotton Domestic User/Exporter Agreement.

* * * * *

7. Section 1427.108 is amended by removing paragraph (c)(3) and by revising paragraph (c)(2), to read as follows:

§ 1427.108 Payment.

* * * * *

(c) * * *

(2) Through July 31, 2003, exported by the exporter on the date CCC determines is the date on which the cotton is shipped.

* * * * *

8. Section 1427.109 is removed.

Signed at Washington, D.C., on December 2, 1998.

James C. Kearney,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 98–32653 Filed 12–8–98; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 98–028–1]

Importation of Poultry Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations for importing animal products to allow the importation of poultry carcasses and parts or products of poultry carcasses from regions where exotic Newcastle disease (END) is considered to exist if they originated in a region free of END and meet certain conditions with respect to processing and shipping. This action would remove some restrictions on the importation of poultry products from regions where END is considered to exist. We believe the proposed conditions for importation will continue to protect the United States from END.

DATES: Consideration will be given only to comments received on or before February 8, 1999.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–028–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–028–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Michael David, Senior Staff Veterinarian, Animals and Germplasm Programs, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737; (301) 734–5034; or e-mail: michael.j.david@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 govern the importation of certain animals, birds, poultry, meat, animal products, animal byproducts, hay, and straw into the United States in order to prevent the introduction of communicable diseases of livestock and poultry. The regulations in 94.6 (referred to below as the regulations) govern, among other things, the importation of poultry carcasses, parts, and products from regions where exotic Newcastle disease (END) is considered to exist.

Under the regulations, poultry carcasses and parts or products of poultry carcasses may be imported into the United States from regions where END is considered to exist only under one of the following conditions:

1. If they are imported for consignment to a museum, educational institution, or other establishment that has been approved by the Administrator of the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture (USDA). Approval is based on the establishment providing the Administrator with evidence that it has the equipment, facilities, and capabilities to store, handle, process, or disinfect the articles to prevent the introduction or dissemination of END into the United States.

2. If they are packed in hermetically sealed containers and afterward cooked by a commercial method to produce articles that are shelf stable without refrigeration.

3. If they are thoroughly cooked, and, upon inspection by a representative of the United States Department of Agriculture at the port of arrival, have a thoroughly cooked appearance throughout.

4. If they are imported under permit granted by the Administrator of APHIS after he or she determines that the importation will not constitute a risk of introducing or disseminating END into the United States.

We are proposing to amend § 94.6 to also allow poultry carcasses and parts or products of poultry carcasses to be imported into the United States from regions where END is considered to exist if they originated in a region free of END and meet certain requirements with respect to processing and shipping. The primary purpose of this change is to allow poultry meat that originates in the United States to be shipped for processing to a country where END is considered to exist, and then returned to the United States. The proposal would also allow poultry meat that originates in another END-free region to be processed in a region where END is considered to exist and then be shipped to the United States. This action would remove some restrictions on the importation of poultry carcasses and parts or products of poultry carcasses from regions where END is considered to exist. We believe this action poses only a negligible risk of introducing END into the United States.

Shipment to Approved Establishments

Under this proposed rule, the poultry carcasses and parts or products of poultry carcasses that originate in a region free of END must be shipped for processing to the region where END is considered to exist in closed containers sealed with serially-numbered seals applied by an official of the national government of the region of origin. The shipments would have to be accompanied by a certificate that was signed by an official of the national government of the region of origin and that specifies the products' region of origin, the processing establishment to which the products are consigned, and the numbers of the seals applied to the shipping containers.

Upon arrival at the processing establishment, the poultry carcasses and parts or products of poultry carcasses could only be removed from the containers after an official of the foreign region's national government had determined that the seals were intact and free of any evidence of tampering.

The official would have to attest to this fact by signing the certificate accompanying the shipment. The signed certificate would have to be kept on file at the processing establishment for at least 2 years after export of the processed products to the United States, and must be made available to USDA inspectors to demonstrate compliance with our regulations, if requested, during announced or unannounced inspections.

Handling at Approved Establishments

Under this proposed rule, the poultry carcasses and parts or products of poultry carcasses would be eligible for importation into the United States only if they were handled and processed in accordance with the following criteria:

1. Establishments in regions where END is considered to exist that process poultry carcasses and parts or products of poultry carcasses for export to the United States may not receive or process any live poultry since END is easily spread in environments where live birds are caged or slaughtered.

2. Processing establishments are not required to be facilities dedicated to processing poultry products from END-free regions. Poultry carcasses and parts or products of poultry carcasses that originate in regions where END is considered to exist may be processed at the same facility as poultry carcasses and parts or products of poultry carcasses from END-free regions provided the following conditions are met:

- All areas, utensils, and equipment liable to contact the poultry carcasses and parts or products of poultry carcasses to be processed, including areas, utensils, and equipment for skinning, deboning, cutting, and packing, must be cleaned and disinfected between processing poultry from regions where END is considered to exist and poultry from END-free regions in order to avoid contamination.

• Poultry carcasses and parts or products of poultry carcasses intended for export to the United States may not be handled, cut, or otherwise processed at the same time as poultry carcasses and parts or products of poultry carcasses not eligible for export to the United States in order to avoid contamination.

• Poultry carcasses and parts or products of poultry carcasses intended for export to the United States must be packed in clean, new packaging that is clearly distinguishable from that containing poultry carcasses and parts or products of poultry carcasses not eligible for export to the United States. Poultry carcasses and parts or products of poultry carcasses must be stored in a manner that ensures that no cross-contamination occurs.

3. Under the proposed rule, establishment operators would have to enter into a cooperative service agreement with APHIS to ensure that all expenses incurred by APHIS in inspecting the establishment would be paid by the operators of the processing establishment. APHIS anticipates that such inspections would occur once a year. The cooperative service account would be required to contain a balance at least equal to the cost of one inspection. APHIS would charge the cooperative service account for travel, salary, and subsistence of APHIS employees, as well as administrative overhead and other incidental expenses (including excess baggage charges up to 150 pounds).

Shipment to the United States

Poultry carcasses and parts or products of poultry carcasses to be imported into the United States must be shipped from the region where they were processed in closed containers sealed with serially-numbered seals applied by an official of the national government of that region. The shipments would have to be accompanied by a certificate signed by an official of the national government of the region where the poultry carcasses and parts or products of poultry carcasses were processed. The certificate would have to state that all of the above conditions have been met and would also have to list the numbers of the seals applied. A copy of this certificate must also be kept on file at the processing establishment for at least 2 years after the products were shipped to the United States.

We believe the conditions described above would ensure that the poultry products present a negligible risk of introducing END into the United States.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, which is set out below, regarding the impact of this proposed rule on small entities. Based on the information we have, there is no basis to conclude that this rule will result in any significant economic impact on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

This proposed rule would amend the regulations for importing animal products to allow the importation of poultry carcasses and parts or products of poultry carcasses from regions where exotic Newcastle disease (END) is considered to exist if they originated in a region free of END and meet certain conditions with respect to processing and shipping. This proposal would remove some restrictions on the importation of poultry carcasses and parts or products of poultry carcasses from regions where END is considered to exist.

In accordance with 21 U.S.C. 111–113, 114a, 115, 117, 120, 123, and 134a, the Secretary of Agriculture has the authority to promulgate regulations and take measures to prevent the introduction into the United States, and the interstate dissemination within the United States, of communicable diseases of livestock and poultry.

This proposal would allow poultry carcasses and parts or products of poultry carcasses that originated in any END-free region to be processed in any region where END is considered to exist, and then be shipped to the United States. At this time, however, the most likely outcome of this proposal is that U.S.-origin poultry carcasses and parts or products of poultry carcasses would be shipped to Mexico for processing and then returned to the United States. It is unlikely that any poultry processed in countries other than Mexico would enter the United States as a result of this proposal. The high cost of shipping processed poultry from END-free countries in the eastern hemisphere to the United States makes it unlikely that such exports could compete in the U.S. market. Further, countries other than Mexico in the western hemisphere that could export processed poultry to the United States under this proposal generally do not produce enough poultry and poultry products to meet their own domestic demand. Western countries other than Mexico may also have difficulty competing in the U.S. market due to costs of shipping, unless the products exported were specialty items not otherwise produced domestically in the United States. Therefore, we anticipate that Mexico would be the only country to export any processed poultry to the United States under this proposal, and our analysis is based on this scenario. We welcome public comment on other potential sources of processed poultry which would be allowed importation into the United States if this proposal were adopted.

Poultry From Mexico

Poultry products to be imported into the United States from Mexico under the proposed regulations would be required to originate in an END-free region. Under § 94.6 of the regulations, the only END-free regions in the western hemisphere are Canada, Chile, Costa Rica, and the United States. Poultry carcasses and parts or products of poultry carcasses from Costa Rica could potentially be imported into Mexico for processing and export to the United States, but Costa Rica does not appear to produce enough poultry carcasses and parts or products of poultry carcasses domestically to make such exports feasible or profitable. It is unlikely that any Canadian poultry would be shipped to Mexico for processing under this rule since U.S. poultry is available for processing at lower cost. Further, the costs of shipping the poultry carcasses and parts or products of poultry carcasses to Mexico from Canada, Costa Rica, Chile, or any other END-free foreign region, and subsequent costs of shipping poultry products from Mexico to the United States, would likely be too high for the processed poultry to be competitive in the U.S. market.

Therefore, it is likely that any poultry carcasses and parts or products of poultry carcasses to be imported into Mexico for processing in accordance with our proposal would originate in the United States due to the United States' proximity to Mexico, its status as a net poultry exporter, and the low cost of its unprocessed poultry. Poultry

carcasses and parts or products of poultry carcasses would likely be ground-shipped by southwestern and border State poultry producers to facilities in northern Mexico for processing and reexportation to the United States. Exactly how many U.S. poultry producers would take advantage of this proposal and ship poultry carcasses or products to Mexico to be processed and reexported to the United States is not known. It is possible that U.S. producers would ship poultry carcasses or products to Mexico for processing to take advantage of lower processing costs or to use Mexican processing plants as supplements to the existing U.S. workforce and facilities.

In 1997, the United States produced 33,115 million pounds of poultry products, valued at $17 billion, and exported poultry meat valued at over $2.2 billion (with 10 percent exported to Mexico). We anticipate that whatever volume of processed poultry may be imported as a result of this proposal would be minimal in relation to the overall volume of poultry products currently available in the United States.

In 1997, the United States imported poultry meat valued at $11.2 million. Less than 2 percent of that total ($247,000) was imported from Mexico, while over 93 percent ($10.5 million) was imported from Canada. We anticipate that whatever volume of processed poultry that is imported as a result of this proposal will be minimal in relation to the total volume of all processed poultry imported into the United States.

Trade Relations

This proposal would remove some restrictions on the importation of poultry carcasses and parts or products of poultry carcasses from regions where END is considered to exist and would encourage a positive trading environment between the United States and Mexico and other regions where END is considered to exist by stimulating economic activity and providing export opportunities to foreign poultry processing industries.

Effect on Small Entities

This proposal may have an effect on domestic poultry processors, who could potentially lose business to Mexican poultry processors as a result of the proposed rule. This proposal may also benefit U.S. truckers and haulers, wholesale traders, and poultry producers and packers, who stand to benefit from increased Mexican trade. However, the extent to which small entities may be affected by this proposal cannot be determined at this time.

Alternatives Considered

In developing this proposed rule, we considered: (1) Making no changes to the regulations governing the importation of poultry from regions where END is considered to exist; (2) proposing to allow the importation of poultry carcasses and parts or products of poultry carcasses that originated in a region free of END but that were processed in a region where END is considered to exist under conditions different from those proposed; or (3) proposing to allow the importation of poultry carcasses and parts or products of poultry carcasses that originated in a region free of END but that were processed in a region where END is considered to exist under the conditions proposed in this document.

We rejected the first alternative because the proposal appears to provide a way to remove trade restrictions while maintaining adequate safeguards against the introduction of END into the United States. Under these circumstances, making no changes to the regulations would be contrary to trade agreements entered into by the United States.

We also rejected the second alternative because it appeared that conditions less stringent than those proposed would increase the risk of the introduction of END into the United States to more than a negligible level and that more stringent conditions would be unnecessarily restrictive. We consider the proposed conditions to be both effective and necessary in keeping at a negligible level the risk of imported poultry products introducing END into the United States.

The proposed changes to the regulations would result in new information collection or recordkeeping requirements, as described below under the heading ''Paperwork Reduction Act.''

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 98–028–1. Please send a copy of your comments to: (1) Docket No. 98–028–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would amend the regulations to relieve certain restrictions on the importation of poultry carcasses and parts or products of poultry carcasses from regions where exotic Newcastle disease (END) is considered to exist if they originated in a region free of END and meet certain conditions with respect to processing and shipping.

Implementing this proposed rule would necessitate the use of two paperwork collection activities: The completion of a foreign meat inspection certificate and the placing of seals on shipping containers.

We are asking OMB to approve our use of these information collections.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. We need this outside input to help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, 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 proposed information collection on those who are to respond, (such as 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).

Estimate of burden: Public reporting burden for this proposed collection of information is estimated to average 0.147 hours per response.

Respondents: Full-time, salaried veterinarians of the agency of the Government of Mexico responsible for animal health.

Estimated annual number of respondents: 4.

Estimated annual number of responses per respondent: 51.

Estimated annual number of responses: 204.

Estimated total annual burden on respondents: 30 hours.

Copies of this information collection can be obtained from Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry, and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are proposing to amend 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS.

1. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

2. In § 94.6, the section heading would be revised, paragraph (c)(5) would be redesignated as paragraph (c)(6), and a new paragraph (c)(5) would be added to read as follows:

94.6 Carcasses, parts or products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds; importations from regions where exotic Newcastle disease (END) or S. enteritidis is considered to exist.

* * * * *

(c) * * *

(5) Poultry carcasses and parts or products of poultry carcasses that originated in a region considered to be free of END and are processed (cut, packaged, and/or cooked) in a region where END is considered to exist may be imported under the following conditions:

(i) *Shipment to approved establishments.*

(A) The poultry carcasses or parts or products of poultry carcasses must be shipped from the END-free region where they originated in closed containers sealed with serially-numbered seals applied by an official of the national government of that region. They must be accompanied by a certificate that is signed by an official of that region's national government and specifies the products' region of origin, the processing establishment to which the poultry carcasses or parts or products of poultry carcasses are consigned, and the numbers of the seals applied to the shipping containers.

(B) The poultry carcasses or parts or products of poultry carcasses may be removed from containers at the processing establishment in the region where END is considered to exist only after an official of the foreign region's national government has determined that the seals are intact and free of any evidence of tampering. The official must attest to this fact by signing the certificate accompanying the shipment.

(ii) *Handling of poultry carcasses and parts or products of poultry carcasses.* Establishments [1] in regions where END is considered to exist that process poultry carcasses or parts or products of poultry carcasses for export to the United States:

(A) May not receive or handle any live poultry.

(B) Must keep any records required by this section on file at the facility for a period of at least 2 years after export of processed products to the United States, and must make those records available to USDA inspectors during inspections.

(C) May process poultry carcasses and parts or products of poultry carcasses that originate in both END-free regions and regions where END is considered to exist, provided that:

(*1*) All areas, utensils, and equipment liable to contact the poultry carcasses and parts or products of poultry carcasses to be processed, including skinning, deboning, cutting, and packing areas, are cleaned and disinfected between processing poultry from regions where END is considered to exist and poultry carcasses and parts or products of poultry carcasses from END-free regions.

(*2*) Poultry carcasses and parts or products of poultry carcasses intended for export to the United States are not handled, cut, or otherwise processed at the same time as any poultry not eligible for export to the United States.

(*3*) Poultry carcasses and parts or products of poultry carcasses intended for export to the United States are packed in clean new packaging that is clearly distinguishable from that containing any poultry not eligible for export to the United States.

(*4*) Poultry carcasses and parts or products of poultry carcasses are stored in a manner that ensures that no cross-contamination occurs.

(iii) *Cooperative service agreement.* Operators of processing establishments must enter into a cooperative service agreement with APHIS to pay all expenses incurred by APHIS in inspecting the establishment. APHIS anticipates that such inspections will occur once a year. The cooperative service account must always contain a balance that is at least equal to the cost of one inspection. APHIS will charge the cooperative service account for travel, salary, and subsistence of APHIS employees, as well as administrative overhead and other incidental expenses (including excess baggage charges up to 150 pounds).

(iv) *Shipment to the United States.* Poultry carcasses and parts or products of poultry carcasses to be imported into the United States must be shipped from the region where they were processed in closed containers sealed with serially-numbered seals applied by an official of the national government of that region. The shipments must be accompanied by a certificate signed by an official of the national government of the region where the poultry was processed that lists the numbers of the seals applied and states that all of the conditions of this section have been met. A copy of this certificate must be kept on file at the processing establishment for at least 2 years.

* * * * *

Done in Washington, DC, this 2nd day of December 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–32654 Filed 12–8–98; 8:45 am]

BILLING CODE 3410–34–P

[1] As a condition of entry into the United States, poultry or poultry products must also meet all of the requirements of the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*) and regulations thereunder (9 CFR part 381), including requirements that the poultry or poultry products be prepared only in approved establishments.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–106–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300 and A300–600 series airplanes. This proposal would require replacement of the rivets that attach the pressurized floor panel to gantries 4 and 5 with new titanium alloy bolts. This proposal also would require, for certain airplanes, repetitive inspections to detect discrepancies of the rivets; and corrective actions, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the rivets that attach the pressurized floor panel to gantries 4 and 5, which could result in the loss of the floor panel and consequent rapid decompression of the airplane.

DATES: Comments must be received by January 8, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–106–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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:

Comments Invited

Interested persons are invited to participate in the making of the proposed 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 above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed 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 summarizing each FAA-public contact concerned with the substance of this proposal 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–NM–106–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–106–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A300 and A300–600 series airplanes. The DGAC advises that, during maintenance on a Model A300 series airplane, maintenance personnel discovered several rivets had been sheared off that attach the pressurized floor panel to gantry 5 between frames 47 and 48. Those rivets are also used to attach the pressurized floor panel to gantry 4. Investigation has revealed that alternate bending stress under the rivet heads caused the rivets to break. The cause of the stress has been attributed to an alternate shear load between the pressurized floor panel and gantries 4 and 5. Failure of the rivets, if not corrected, could result in the loss of the floor panel and consequent rapid decompression of the airplane.

The rivets that attach the pressurized floor panel to gantries 4 and 5 on certain Model A300–600 series airplanes are similar in design to those on Model A300 series airplanes; therefore, both models may be subject to the same unsafe condition.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A300–53–0331, dated March 18, 1997 (for Model A300 series airplanes), and A300–53–6107, dated March 18, 1997 (for Model A300–600 series airplanes), which describe procedures for replacement of the rivets between frames 47 and 48 at gantries 4 and 5 with new titanium alloy bolts.

For certain airplanes, these service bulletins also describe procedures for repetitive detailed visual inspections to detect discrepancies of the existing rivets; corrective actions, if necessary; and eventual replacement of the plain aluminum rivets or blind rivets with titanium alloy bolts.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 97–176–229(B), dated August 13, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require replacement of the existing rivets that attach the pressurized floor panel to gantries 4 and 5 with new titanium alloy bolts. For certain airplanes, this proposal would require repetitive inspections to detect discrepancies of the existing rivets; corrective actions, if necessary; and eventual replacement of the plain aluminum rivets or blind rivets that attach the pressurized floor panel to gantries 4 and 5 with titanium alloy bolts.

Cost Impact

The FAA estimates that 24 Airbus Model A300 series airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 26 work hours per

airplane to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Required parts would cost between $3,160 and $3,520 per airplane, depending on the service kit purchased. Based on these figures, the cost impact of the replacement proposed by this AD on U.S. operators of Airbus Model A300 series airplanes is estimated to be as low as $4,720 per airplane or as high as $5,080 per airplane.

The FAA estimates that 61 Airbus Model A300–600 series airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 26 work hours per airplane to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Required parts would cost between $3,530 and $3,550 per airplane, depending on the service kit purchased. Based on these figures, the cost impact of the replacement proposed by this AD on U.S. operators of Airbus Model A300–600 series airplanes is estimated to be as low as $5,090 per airplane or as high as $5,110 per airplane.

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

Should an operator be required to accomplish the proposed inspection, it would take approximately 1 work hour to accomplish, at an average labor rate of $60 per work hour. Based on this figure, the cost impact of the inspection proposed by this AD on U.S. operators of Airbus Model A300 and A300–600 series airplanes is estimated to be $60 per airplane, per inspection cycle.

Regulatory Impact

The regulations proposed herein would 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 proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the 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. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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:

Airbus Industrie: Docket 98–NM–106–AD.

Applicability: Model A300 and A300–600 series airplanes on which Airbus Modification 11523 (reference Airbus Service Bulletins A300–53–0331 and A300–53–6107, both dated March 18, 1997) has not been accomplished, 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 failure of the rivets that attach the pressurized floor panel to gantries 4 and 5, which could result in the loss of the floor panel and consequent rapid decompression of the airplane, accomplish the following:

(a) Accomplish paragraph (a)(1), or paragraphs (a)(2) and (a)(3), of this AD at the times specified in those paragraphs in accordance with Airbus Service Bulletin A300–53–0331, dated March 18, 1997 (for Airbus Model A300 series airplanes); or Airbus Service Bulletin A300–53–6107, dated March 18, 1997 (for Airbus Model A300–600 series airplanes); as applicable.

(1) Replace the rivets that attach the pressurized floor panel to gantries 4 and 5 with new titanium alloy bolts, at the applicable time specified in paragraph (a)(1)(i), (a)(1)(ii), (a)(1)(iii), or (a)(1)(iv) of this AD.

(i) For Airbus Model A300–600 series airplanes, replace the rivets prior to the accumulation of 7,150 total flight cycles.

(ii) For Airbus Model A300 B4–203 series airplanes, replace the rivets prior to the accumulation of 10,000 total flight cycles.

(iii) For Airbus Model A300 B4–2C and B4–103 series airplanes, replace the rivets prior to the accumulation of 12,300 total flight cycles.

(iv) For Airbus Model A300 B2–1C, B2–203, and B2K–3C series airplanes, replace the rivets prior to the accumulation of 14,600 total flight cycles.

(2) Perform a detailed visual inspection to detect any broken or discrepant rivets that attach the pressurized floor panel to gantries 4 and 5, at the applicable time specified in paragraph (a)(2)(i), (a)(2)(ii), (a)(2)(iii), or (a)(2)(iv) of this AD. Repeat the inspection thereafter at intervals not to exceed 350 flight cycles until accomplishment of the action required by paragraph (a)(3) of this AD.

(i) For Airbus Model A300–600 series airplanes, inspect the rivets prior to the accumulation of 7,500 total flight cycles, or within 350 flight cycles after the effective date of this AD, whichever occurs later.

(ii) For Airbus Model A300 B4–203 series airplanes, inspect the rivets prior to the accumulation of 10,350 total flight cycles, or within 350 flight cycles after the effective date of this AD, whichever occurs later.

(iii) For Airbus Model A300 B4–2C and B4–103 series airplanes, inspect the rivets prior to the accumulation of 12,650 total flight cycles, or within 350 flight cycles after the effective date of this AD, whichever occurs later.

(iv) For Airbus Model A300 B2–1C, B2–203, and B2K–3C series airplanes, inspect the rivets prior to the accumulation of 14,950 total flight cycles, or within 350 flight cycles after the effective date of this AD, whichever occurs later.

(3) Within 3,000 flight cycles after the effective date of this AD, replace the rivets that attach the pressurized floor panel to gantries 4 and 5 with new titanium alloy bolts in accordance with the applicable service bulletin. Accomplishment of this replacement constitutes terminating action for the repetitive inspections.

(b) If any discrepant or broken rivet is detected during any inspection specified in paragraph (a)(2) of this AD, prior to further flight, accomplish either paragraph (b)(1) or (b)(2) of this AD, as applicable, in accordance with Airbus Service Bulletin A300–53–0331, dated March 18, 1997 (for Airbus Model A300 series airplanes); or Airbus Service Bulletin A300–53–6107, dated March 18, 1997 (for Airbus Model A300–600 series airplanes).

(1) If less than 15 discrepant or broken rivets are detected, prior to further flight, replace the discrepant or broken rivets with serviceable rivets and continue the repetitive inspections, in accordance with the applicable service bulletin, until

accomplishment of the action required by paragraph (a)(3) of this AD.

(2) If 15 or more discrepant or broken rivets are detected, prior to further flight, replace all the rivets that attach the pressurized floor panel to gantries 4 and 5 with new titanium alloy bolts, in accordance with the applicable service bulletin. Accomplishment of this replacement constitutes terminating action for the repetitive inspections required by this AD.

(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 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.

Note 3: The subject of this AD is addressed in French airworthiness directive 97–176–229(B), dated August 13, 1997.

Issued in Renton, Washington, on December 2, 1998.

John W. McGraw,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–32620 Filed 12–8–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–63]

Proposed Establishment of Class E Airspace; Ada, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Ada, MN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 33 has been developed for Norman County Ada/Twin Valley Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to create controlled airspace at Norman County Ada/Twin Valley Airport to accommodate the approach.

DATES: Comments must be received on or before January 26, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–63, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AGL–63.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

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

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Ada, MN, to accommodate aircraft executing the proposed GPS Rwy 33 SIAP at Norman County Ada/Twin Valley Airport by creating controlled airspace at the airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F 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 will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—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 Ada, MN [New]

Ada, Norman County Ada/Twin Valley Airport, MN
(Lat. 47°15′38″ N., long. 96°24′01″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Norman County Ada/Twin Valley Airport.

* * * * *

Issued in Des Plaines, Illinois on November 24, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–32730 Filed 12–8–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 334

[Docket No. 78N–036L]

RIN 0910–AA01

Laxative Drug Products for Over-the-Counter Human Use; Partial Withdrawal of Proposed Amendment to the Tentative Final Monograph; Intent to Repropose

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking; withdrawal in part and intent to repropose.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing that part of the notice of proposed rulemaking that would have amended the tentative final monograph for over-the-counter (OTC) laxative drug products to include additional professional labeling for oral and rectal dibasic sodium phosphate/monobasic sodium phosphate (sodium phosphates) drug products. The agency intends to repropose the professional labeling for these products in a future issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gloria Chang, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 21, 1998 (63 FR 27886), FDA published an amendment to the tentative final monograph for OTC laxative drug products proposing to include additional general labeling and expanded professional labeling for oral and rectal sodium phosphates drug products. The agency proposed to expand the professional labeling for products containing sodium phosphates in § 334.80(b)(2) of the tentative final monograph for OTC laxative drug products (50 FR 2124 at 2157, January 15, 1985). The agency also proposed a new format using specific headings to make the proposed professional labeling information clearer and more readable. Interested persons were invited to submit written comments or objections by August 19, 1998.

The agency plans to further expand the professional labeling in proposed § 334.80(b)(2). This notice is to inform interested persons that the agency is withdrawing the proposed amendment to the OTC laxative tentative final monograph for professional labeling for products containing sodium phosphates in § 334.80(b)(2) and will be reproposing the professional labeling in a future issue of the **Federal Register**. Further, this partial withdrawal of the proposed amendment to the OTC laxative tentative final monograph does not affect the current marketing status of sodium phosphates drug products.

The agency has determined under 21 CFR 25.31(c) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This withdrawal notice is issued under authority of 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

Dated: December 1, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–32642 Filed 12–8–98; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD055–3021b; FRL–6199–4]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Stage II Vapor Recovery Comparability Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is taking direct final action on the State Implementation Plan (SIP) revision submitted by the State of Maryland. The revision concerns a plan which demonstrates that the emission reductions of volatile organic compounds (VOC) required in ozone attainment and marginal ozone nonattainment areas in Maryland are comparable to the reductions which would be achieved by Stage II vapor recovery (Stage II) in those same areas. EPA is proposing this revision to achieve reductions in the emissions of VOCs in the State of Maryland in accordance with the requirements of the Clean Air Act.

In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. This Stage II comparability plan allows Maryland to achieve VOC reductions.

DATES: Comments must be received in writing by January 8, 1999.

ADDRESSES: Written comments should be addressed to Makeba A. Morris, Chief, Technical Assessment Branch, Mailcode 3AP22, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Ruth E. Knapp, (215) 814–2191, at the EPA Region III address above, or by e-mail at knapp.ruth@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

For further information, please see the information provided in the direct final action that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: November 30, 1998.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 98–32578 Filed 12–8–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD076–3030b; FRL–6197–4]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; General Conformity Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is taking direct final action on the State Implementation Plan (SIP) revision submitted by the State of Maryland for the purpose of establishing a general conformity rule. The general conformity rule sets forth policy, criteria and procedures for demonstrating and assuring conformity of non-transportation related Federal projects to all applicable air quality implementation plans. EPA is proposing to approve Maryland's general conformity regulation as a SIP revision in accordance with the requirements of the Clean Air Act.

In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A more detailed description of the State submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect.

EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by January 8, 1999.

ADDRESSES: Written comments should be addressed to Robert Kramer, Chief; Energy, Radiation and Indoor Environment Branch; Mailcode 3AP23; U.S. Environmental Protection Agency, Region III; 1650 Arch Street; Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Larry Budney, (215) 814–2184, at the EPA Region III address above, or by e-mail at budney.larry@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action to approve the Maryland General Conformity regulation, which is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: November 24, 1998.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 98–32573 Filed 12–8–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 58

[FRL–6198–6]

RIN 2060–AH92

Air Quality Index Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to change the uniform air quality index used by States for daily air quality reporting to the general public in accordance with section 319 of the Clean Air Act (Act). These proposed changes include the addition of the following elements: a new category described as ''unhealthy for sensitive groups,'' new breakpoints for the ozone (O_3) sub-index in terms of 8-hour average O_3 concentrations, a new sub-index for fine particulate matter ($PM_{2.5}$), and conforming changes to the sub-indices for inhalable particulate matter (PM_{10}), carbon monoxide (CO), and sulfur dioxide (SO_2). These proposed changes reflect the revisions to the health-based primary national ambient air quality standards (NAAQS) for O_3 and particulate matter (PM) published in the **Federal Register** on July 18, 1997. This document discusses the development of related informational materials on pollutant-specific health effects and sensitive groups and on precautionary actions that can be taken by individuals to reduce exposures of concern. This document also discusses the interrelationship between the uniform air quality index and other programs that provide air quality information and related health information to the general public, including State and local real-time air quality data mapping and community action programs.

DATES: Written comments on this proposed rule must be received by January 25, 1999.

ADDRESSES: Submit comments (in duplicate if possible) on the proposed rule to: Air and Radiation Docket and Information Center (6102), Attn: Docket No. A–98–20, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Terence Fitz-Simons, MD–14, Office of Air Quality Planning and Standards, EPA, Research Triangle Park, NC 27711, telephone (919) 541–0889, e-mail fitz-simons.terence@epamail.epa.gov. For health effects information contact Susan Lyon Stone, MD–15, Office of Air Quality Planning and Standards, EPA,

Research Triangle Park, NC 27711, telephone (919) 541–1146, e-mail stone.susan@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In compliance with President Clinton's June 1, 1998 Executive Memorandum on Plain Language in government writing, this package is written using plain language. Thus, the use of ''we'' or ''us'' in this package refers to EPA. The use of ''you'' refers to the reader and may include industry, State and local agencies, environmental groups and other interested individuals.

Docket

Docket No. A–98–20, containing information relating to the EPA's revision of the uniform air quality index, is available for public inspection in the Air and Radiation Docket and Information Center of the Environmental Protection Agency, 401 M St. SW, room M–1500, Washington, DC. The docket may be inspected between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding holidays. A reasonable fee may be charged for copying.

Availability of Related Information

Certain documents are available from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Available documents include:

(1) The Review of the National Ambient Air Quality Standards for Ozone: Assessment of Scientific and Technical Information (''Staff Paper'')(EPA–452/R–96–007, June 1996, NTIS # PB–96–203435, $67.00 paper copy and $21.50 microfiche). (Add a $3.00 handling charge per order.)

(2) Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information (''Staff Paper'') (EPA–452/R–96–013, July 1996, NTIS #PB–97–115406, $47.00 paper copy and $19.50 microfiche). (Add a $3.00 handling charge per order.)

The following document will be available in January 1999 from the National Center for Environmental Publications and Information (NCEPI). Requests for this publication can be mailed to: U.S. Environmental Protection Agency, NCEPI, P.O. Box 42419, Cincinnati, OH, 45242. Your request may also be phoned in to NCEPI at 1–800–490–9198 or faxed to 513–489–8695.

(1) Community Action Programs: Blueprint for Program Design (EPA 420–R–98–003).

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I. Background

A. What Are the Legislative Requirements?

Section 319 of the Act governs the establishment of uniform air quality index for reporting of air quality. This section directs the Administrator to ''promulgate regulations establishing an air quality monitoring system throughout the United States which utilizes uniform air quality monitoring criteria and methodology and measures such air quality according to a uniform air quality index'' and ''provides for daily analysis and reporting of air quality based upon such uniform air quality index* * *''.

B. What Is the History of the Air Quality Index?

In 1976, we established a nationally uniform air quality index (AQI), called the Pollutant Standard Index (PSI), for use by State and local agencies on a voluntary basis (41 FR 37660). This uniform index was established in light of a study conducted by EPA and the President's Council on Environmental Quality (CEQ, 1976). This study found that the 55 urban areas in the U.S. and Canada reporting an index of air quality used 14 different indices, in conjunction with different cautionary messages, such that in essence 55 different indices were being used to report air quality. This diversity of indices sent a confusing message about air quality to the public. Based in part on this study, we developed an index to meet the needs of State and local agencies that has the following advantages: it sends a clear and consistent message to the public by providing nationally uniform information on air quality; it is keyed to the NAAQS and the significant harm level (SHL)[1] which have a scientific basis relating air quality and public health; it is simple and easily understood by the public; it provides a basis for accommodating changes to the NAAQS; and it can be forecasted to provide advance information on air quality.

The PSI, which is also commonly referred to by some State and local agencies as the AQI, includes sub-indices for O_3, PM, CO, SO_2, and nitrogen oxide (NO_2), which relate ambient pollutant concentrations to index values on a scale from 0 through 500. This represents a very broad range of air quality, from pristine air to air pollution levels that present imminent and substantial endangerment to the public. The index is normalized across pollutants by defining an index value of 100 as the numerical level of the primary NAAQS for each pollutant and an index value of 500 as the SHL.[2] Such index values serve to divide the index into categories, with each category being

[1] Significant harm levels are those ambient concentrations of air pollutants that present an imminent and substantial endangerment to public health or welfare, or to the environment, as established in 40 CFR part 51.151.

[2] Intermediate index values of 200, 300, and 400 were defined and are the basis for the Alert, Warning, and Emergency episode levels included in 40 CFR part 51, appendix L, as part of the Prevention of Air Pollution Emergency Episodes program. This program requires specified areas to have contingency plans in place and to implement these plans during episodes when high levels of air pollution, approaching the SHL, are in danger of being reached. Changes to this emergency episode program will be proposed in the near future.

Below an index value of 100, an intermediate value of 50 was defined either as the level of the annual standard if an annual standard has been established (for PM_{10} and SO_2), or as a concentration equal to one-half the value of the short-term standard used to define an index value of 100 (for O_3 and CO). Inhalable particulate matter, PM_{10}, refers to particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers.

identified by a simple informative descriptor. The descriptors are intended to convey to the public information about how air quality within each category relates to public health, with increasing public health concerns being conveyed as the categories range to the upper end of the scale. Additional information about the general health effects associated with each category, and precautions that sensitive groups and the general public should take to avoid exposures of concern, has been made available through an informational booklet, updated as appropriate, that also presents and explains the PSI (EPA, 1994).

In 1979, we made changes to the PSI, in part to reflect revisions to the NAAQS for O_3, and to establish requirements for PSI reporting (44 FR 27598). The requirement for State and local agencies to report the PSI appears in 40 CFR part 58.50, and the specific requirements (e.g., what to report, how to report, reporting frequency, calculations) are in appendix G to 40 CFR part 58.

C. What Programs Are Related to the PSI?

Historically, State and local agencies have used primarily the PSI, or other AQIs, to provide general information to the public about air quality and its relationship to public health. In recent years, many States and local agencies, as well as EPA, have been developing new and innovative programs and initiatives to provide more information to the public, in a more timely way. These initiatives, including real-time data reporting through the Ozone Mapping Project and community action programs, can serve to provide useful, up-to-date, and timely information to the public about air pollution and its effects. Such information will help individuals take actions to avoid or reduce exposures of concern and can encourage the public to take actions that will reduce air pollution on days when levels are projected to be in air quality categories of concern to local communities. Thus, these programs are significantly broadening the ways in which State and local agencies can meet the nationally uniform AQI reporting requirements, and are contributing to State and local efforts to provide community health protection and to attain or maintain compliance with the NAAQS. We and State and local agencies recognize that these programs are interrelated with AQI reporting and with the information on the effects of air pollution on public health that is generated through the periodic review, and revision when appropriate, of the NAAQS.

The most recent revisions to the O_3 and PM NAAQS, the Ozone Mapping Project, and community action programs are discussed briefly below. In light of the interrelationships among these programs, we have developed the revisions to the uniform AQI being proposed today with the goal of creating a revised AQI that can effectively serve as a nationally uniform link across these programs. In so doing, we intend to support and encourage State and local participation in real-time data reporting initiatives and the development and implementation of community action programs that serve public education and health protection goals.

1. Ozone and Particulate Matter NAAQS Revisions

On July 18, 1997, we revised the primary NAAQS for O_3 and PM based on a thorough review of the scientific evidence linking exposures to ambient concentrations of these pollutants to adverse health effects at levels allowed by the previous NAAQS. In particular, we replaced the 1-hour O_3 NAAQS with an 8-hour O_3 NAAQS and supplemented the PM NAAQS with 24-hour and annual standards for fine particulate matter (measured as $PM_{2.5}$ [3]). These revisions provide the basis for changes to the PSI to maintain the relationship between an index value of 100 and the level of the NAAQS, as well as to establish the relationships between ambient concentrations of these pollutants and index values across the full scale of index values from 0 to 500.

In addition, as a result of the reviews of the scientific information upon which the O_3 and PM NAAQS are based, an expanded understanding emerged as to the nature of the relationships between exposure to ambient concentrations of these pollutants and the health effects likely to be experienced, especially near the level of the NAAQS. We and the Clean Air Scientific Advisory Committee (CASAC) [4] recognized that for these pollutants there are no discernible thresholds below which health effects are not likely to occur in the most sensitive individuals, but rather there is a continuum of effects potentially extending down to background levels. As ambient concentrations increase, the proportion of individuals likely to experience effects and the seriousness of the health effects increase. Thus, the standards are not risk free. While the standards protect public health with an adequate margin of safety, in accordance with sections 108 and 109 of the Act, including the health of sensitive groups, exposures to ambient concentrations just below the numerical level of the standards may result in exposures of concern for the most sensitive individuals. Conversely, exposures to ambient concentrations just above the numerical level of the standards are not likely to result in exposures of concern for most healthy people. This expanded understanding is reflected in the new forms of the standards, which allow for multiple days above the numerical level of the standards.

These understandings were reflected in CASAC's advice to the Administrator during the O_3 NAAQS review, urging expansion of the public health advisory system (i.e., a uniform AQI) and communication to the public of the nonthreshold nature of the health effects. More specifically, a number of CASAC panel members recommended ''that an expanded air pollution warning system be initiated so that sensitive individuals can take appropriate 'exposure avoidance' behavior'' (Wolff, 1995). Consistent with this advice, in the preamble to the proposed revisions to the O_3 NAAQS (61 FR 65733–4), the Administrator requested comment on the usefulness of providing specific health effects information when ambient concentrations are around the numerical level of the standard, the appropriateness of using the PSI to convey such information to the public, the possible addition of two new PSI categories (one just above and one just below the numerical level of the standard) and associated descriptors and levels, as well as related health effects and cautionary statements.

Broad support for modifying the PSI was received in public comments on this aspect of the O_3 NAAQS proposal, as discussed in the final rule establishing revisions to the O_3 NAAQS (62 FR 38873–4). Commenters overwhelmingly endorsed expanding the use of the PSI for various reasons, while many expressed concern with the possible category descriptors suggested in the proposal (i.e., ''moderately good'' and ''moderately unhealthful''). Many commenters felt that an expanded PSI could help particularly sensitive people take action to minimize their exposures, and that the PSI could be combined with community action programs to reduce ambient concentrations when the numerical level of the standard was forecasted to be exceeded. Some commenters endorsed increasing the

[3] $PM_{2.5}$ refers to particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers.

[4] CASAC is a scientific advisory committee established under the Act to review the scientific criteria and standards and to advise the Administrator on revision of the NAAQS, as appropriate.

specificity of health and cautionary statements related to the PSI categories. Commenters from State and local agencies encouraged us to develop any approaches to revising the PSI in consultation with them, specifically in the areas of sharing real-time monitoring data, risk communication with the public, and coordination of a national program.

2. Real-time Data Reporting Initiative (Ozone Mapping Project)

The Ozone Mapping Project is part of EPA's Environmental Monitoring for Public Access and Community Tracking (EMPACT) initiative—a new approach to providing timely environmental information to communities. It is a cooperative effort of the EPA, State and local air pollution control agencies, and regional organizations including the Mid-Atlantic Regional Air Management Association (MARAMA), the Northeast States for Coordinated Air Use Management (NESCAUM), the northeast Ozone Transport Commission (OTC), and the Lake Michigan Air Directors Consortium (LADCO). During the summer of 1998, EPA's Office of Air Quality Planning and Standards assumed coordination of the project.

The Ozone Map provides simple and timely information about ground-level O_3. During the 1998 O_3 season it was available on EPA's AIRNOW web site (http://www.epa.gov/airnow) and on some local television and news reports. It is an animated contour map that shows concentrations of O_3, in categories ranging from good to moderate to varying degrees of unhealthy, based on PSI values, as it develops across the eastern U.S. It was created from real-time, hourly O_3 data provided by a network of more than 400 air monitoring stations from South Carolina to Wisconsin and Maine. When accessed on a computer, cautionary statements for each category could be displayed by running a cursor over the legend. Also available on the AIRNOW web site were still maps of maximum values and forecasted values, and archived animated maps.

Along with the Ozone Map, the AIRNOW web site contains information about O_3 health effects in the ''Health Facts'' section, and emission reduction activities in the ''What You Can Do'' section. It also provides links to real-time data, and community action program web sites, that are maintained by State and local agencies around the country. The goals of the web site are to: (1) Provide real-time air pollution data in an understandable, visual format, (2) provide information about the public health and environmental effects of air pollution, and (3) provide the public with information about ways in which they can protect their health and actions they can take to reduce pollution.

3. Community Action Programs

The implementation of community action programs (also referred to as episodic emission control programs) is becoming increasingly popular across the country as an innovative approach used to reduce emissions of O_3 precursors, CO, and PM. Motivation for implementation of this type of program often stems from local government and business concerns about the NAAQS attainment status of the area and the restrictions, additional controls, and costs associated with being classified as a nonattainment area. Many areas are also motivated by public health concerns and believe that increasing the amount of air quality information available to sensitive populations raises awareness and results in significant health benefits. Specific goals which are usually associated with community action programs include: (1) Educate the public and enhance protection of public health; (2) attain or maintain NAAQS attainment status and the associated economic benefits; (3) meet specific emission reduction targets; and (4) manage/reduce traffic congestion.

Community action programs are usually voluntary and generally provide multiple steps that the public, business, and industry can take to reduce emissions when higher levels of air pollution are forecast to occur, including in particular transportation-related measures such as trip reduction, postponement of certain activities such as vehicle refueling, and maintenance of cars. The programs emphasize educating the public about the impact of individual activities on local air quality and the basics of air pollution. The educational component of these programs also helps to create a strong link between environmental goals and associated public health benefits.

Most of these programs are based on the categories of the PSI and make use of the PSI descriptors and related health effects and cautionary statements on action days. By linking action days to the PSI, local control programs hope to alter individual behavior to reduce emissions and to reduce exposures to the population. In addition to reduced pollutant exposure of the general population due to improved air quality, there are other health benefits directly associated with community action programs that can be enhanced by linkage to the PSI. Different population groups are more sensitive to the harmful effects of the different air pollutants included in the PSI, and the revisions to the PSI proposed today, together with related informational materials, will significantly improve the effectiveness of communications with these groups. Public education or programs directly targeting these groups may provide the most significant benefits of a community action program. Forecasting days with elevated pollution levels, and then communicating effectively about air quality and associated health effects, may help these groups selectively limit their outdoor activities and, therefore, limit their potential for exposures of concern.

We are committed to providing States and local agencies with support in their efforts to meet air quality standards, to inform the public about air quality, and to educate the public about the impacts of air pollution. The revisions to the PSI being proposed today have as a goal the creation of a revised PSI that can effectively serve as a nationally uniform link across the range of programs (e.g., real-time data reporting initiatives, community action programs) that have these functions.

In support of community action programs, we have developed informational materials related to the PSI, including the health effects and cautionary statements associated with each category and more detailed health effects information (see section II.B.3), available on the AIRNOW web site, that State and local agencies may use to enhance their community action programs. Focusing on transportation measures that are often a major component of community action programs, EPA's Office of Mobile Sources (OMS) has developed a report entitled, ''Community Action Programs: Blueprint for Program Design.'' This document describes the major steps needed to put together a successful episodic control program and provides criteria that State and local agencies can use to examine and evaluate their own programs. The report will be available in January 1999 from NCEPI (See Availability of Related Information).

II. Rationale for Proposed Revisions

In developing the revisions to the PSI that are being proposed today, we sought extensive input from State, local agencies, and from the public. As discussed below, we sponsored a workshop with State and local agencies, participated in numerous meetings, prepared and made available a staff draft revision to the PSI sub-index for O_3 for use during the 1998 O_3 season, and conducted several focus groups to obtain public input on the effectiveness

of draft revisions to the PSI and related O_3 maps and informational materials.

A. What Was the Early Input From State/local Agencies?

In January 1998, we conducted a workshop for State and local air pollution control agencies on the PSI and related programs. The objectives of the Workshop were: (1) To give State/local agencies a preview and opportunity for input on anticipated revisions to the PSI, with particular focus on the O_3 sub-index; (2) to provide information and generate discussion regarding the expansion of the Ozone Mapping Project and air quality forecasting approaches; (3) to share information about State/local real-time data reporting and Ozone Action Day programs (community action programs); and (4) to explore cross-cutting issues focusing on how these tools to facilitate communication (i.e., the PSI, Ozone Maps, forecasting) can best be linked to State/local programs. The Workshop provided a forum for broad discussion of these topics, among the participants, with many different points of view expressed.

With regard to revisions to the PSI, broad consensus seemed to exist on the key issues of maintaining simplicity in the structure of the PSI and of providing up-to-date, consistent information relating air quality and public health. More specifically, it was the consensus view that the PSI should be kept as simple as possible, while being consistent with the expanded health information that emerged from the recently completed review of the O_3 and PM NAAQS. The creation of two possible new categories (i.e., one just above and one just below the numerical level of the standard), as described in the O_3 NAAQS proposal (61 FR 65733–4) and final decision (62 FR 38873–4) notices, seemed to evoke negative reactions from most participants for varying reasons (e.g., too complex, too much information, too difficult to forecast in the narrow ranges suggested). Most participants favored creation of a new category above the numerical level of the standard (i.e., dividing the current ''unhealthful'' category into two categories) considering both the expanded health information and linkages to community action programs. Creation of a new category below the level of the standard (i.e., dividing the current ''moderate'' category into two categories) was less generally supported—some felt that a new category just below the level of the standard was important for communicating risks and appropriate cautions, whereas many seemed to feel it was an unnecessary complication that could be confusing to the public.

The Workshop discussion also produced consensus among the participants that any revisions to the descriptors used for PSI categories above the numerical level of the NAAQS should maintain the root word ''health'' rather than more neutral air quality descriptors (e.g., unsatisfactory). The Workshop participants generally preferred the use of the plain English word ''unhealthy'' to the currently used word ''unhealthful.''

The Workshop participants generally encouraged us to revise the calculation methods for the PSI to be consistent with the conventions used in defining the NAAQS. More specifically, the participants supported changing the conventions for rounding numbers in calculating the PSI to be consistent with the rounding conventions used for the NAAQS. This revision would avoid situations where a health advisory could be issued that describes the air as unhealthy, when in fact the numerical level of the standard has not been exceeded.

With regard to forecasting air quality and associated PSI values, Workshop participants generally recognized that for standards that have an averaging period longer than 1 hour (e.g., the 8-hour O_3 NAAQS), forecasting becomes increasingly important. Such forecasts can help people plan to avoid exposures of concern and can provide a basis for providing advance public notice of community action programs. There was strong support for us to prepare guidance on air quality forecasting, especially on using hourly O_3 concentrations as predictors for 8-hour averages.

The Workshop participants expressed strong support in general for enhancements to the Ozone Mapping Project, including real-time data reporting and forecasting. The selection of colors to be associated with the PSI categories depicted on the maps was the subject of much discussion. While there was broad recognition of the importance of using colors with such air quality maps, different views were expressed as to which colors should be associated with specific categories. For example, some participants from areas that had already developed or were developing community action programs expressed the view that the use of the color red on the map should be used for the category that triggers their programs' ''code red'' days. However, different programs have or intend to use different PSI index values to trigger action days, depending on the general level of air quality in the area and the objectives of the action day program in that area.

In summary, Workshop participants encouraged us to develop revisions to the PSI with immediate emphasis on a revised sub-index for O_3, reflecting the 8-hour O_3 NAAQS. Many participants expressed an interest in using such a revised index during the 1998 O_3 season. The participants also encouraged us to prepare additional information, including appropriate cautionary statements that could be used in conjunction with reporting a revised O_3 sub-index and more in-depth information on O_3 health effects to help meet the educational goals of community action programs.

Following the Workshop, we continued coordination with State and local air agencies and associations as part of the process of developing draft revisions to the PSI, particularly the O_3 sub-index, and related informational materials. Some of the agencies and associations that participated in meetings and discussions with us were the State and Territorial Air Pollution Program Administrators and the Association of Local Air Pollution Control Officials (STAPPA/ALAPCO), the OTC, NESCAUM, MARAMA, the California Air Resources Board, the California Air Pollution Control Officers Association (CAPCOA), and the South Coast Air Quality Management District. While different points of view were expressed, all of these discussions reflected the importance of having a nationally uniform advisory system to present consistent health effects information that is related to air quality levels. These discussions helped shape the preparation of a staff draft PSI sub-index for O_3, related O_3-specific cautionary statements, and a draft booklet on O_3 health effects, ''SMOG—Who Does It Hurt?''.

B. Staff Draft Revisions to PSI Sub-index for Ozone

1. Availability for Use in the 1998 Ozone Season

Building on health effects information from the review of the O_3 and PM standards, comments received on the O_3 NAAQS proposal, and input from State, local agencies, and associations, EPA staff prepared draft revisions to the PSI sub-index for O_3. Recognizing that some State and local agencies wanted to use a sub-index based on the new 8-hour O_3 NAAQS for the 1998 O_3 season, in early March we made the draft revised O_3 sub-index available through our AIRNOW web site and through appropriate organizations across the nation. The availability of this revised

O_3 sub-index made possible uniform reporting of the PSI during the 1998 O_3 season based on the 8-hour O_3 NAAQS for those agencies that chose to do so.[5] The draft sub-index categories, descriptors, and related O_3 concentrations, together with related cautionary statements, were the basis for the 1998 O_3 maps produced by the Ozone Mapping Project. The draft O_3 sub-index also provided a link to the 8-hour O_3 standard for use in O_3 action programs around the country.

2. What Were the Staff Draft Revisions?

Draft revisions to the PSI and the O_3 sub-index, together with new O_3 specific cautionary statements, were based on the expanded understanding of O_3 health effects gained during the review of the O_3 NAAQS, comments received on the O_3 NAAQS proposal and subsequent input from State and local agencies, and consideration of the implications of the draft revisions for the pollutants other than O_3 that are included in the PSI.

The staff draft O_3 sub-index reflected general changes to the structure of the PSI as well as specific changes to reflect the new 8-hour O_3 NAAQS. In particular, the primary change to the structure of the PSI was to divide the ''unhealthful'' category (PSI values of 101 to 200) into two categories, ''unhealthy for sensitive groups'' and ''generally unhealthy.'' The use of the descriptor ''unhealthy for sensitive groups,'' for PSI values from 101 to 150, was intended to appropriately caution members of sensitive groups[6] without unduly alarming the general public. This revision recognized that the NAAQS are established to protect sensitive groups, such that at air quality concentrations just above the numerical level of NAAQS the general population is unlikely to experience exposures of concern. Secondly, while the ''moderate'' category (PSI values of 51 to 100) was not divided into two categories, allowance was made to create, in essence, a sub-category in the upper half of this range (PSI values of 76 to 100) for pollutants for which a limited health notice might be appropriate. Such a limited notice would recognize that the NAAQS are not risk free, and that even at concentrations below the numerical level of a NAAQS some extremely sensitive individuals may experience exposures of concern for some pollutants. The only other change made to the PSI was to replace the descriptor ''very unhealthful'' (PSI values from 201 to 300) with the descriptor ''very unhealthy.'' The other categories of ''good'' (PSI values from 0 to 50) and ''hazardous'' (PSI values from 301 to 500) were left unchanged.

Consistent with these structural changes and with the new 8-hour 0_3 NAAQS, the staff draft identified breakpoints for the 0_3 sub-index in terms of 8-hour 0_3 concentrations to the extent possible based on the available health effects information. A breakpoint between the good and moderate categories needed to be defined since there is no annual standard for 0_3 to use as the breakpoint. An 8-hour 0_3 concentration of 0.06 ppm was identified based in part on risk estimates done in conjunction with the review of the 0_3 NAAQS which suggested that risk to healthy people likely becomes negligible at this level (Whitfield et al., 1996). This consideration was judged by staff to be a more appropriate basis for distinguishing between good and moderate categories than the historical approach of setting this breakpoint equal to one-half the numerical level of the short-term standard in the absence of an annual standard. Further, a breakpoint at this level would result in a sufficiently broad range of concentrations for the moderate category to facilitate forecasting and to make gradations in air quality more visually apparent in the Ozone Map. On the other hand, the concentration of 0.07 ppm, 8-hour average, was judged by staff as the appropriate breakpoint for starting to convey a limited health message for extremely sensitive individuals. Thus, this intermediate level of 0.07 ppm, associated with a PSI value of 75, resulted in essentially creating a sub-category in the upper half of the moderate category. Conveying such a limited health message for extremely sensitive individuals at concentrations just below the level of the NAAQS is consistent with the advice of CASAC during the review of the 0_3 NAAQS (Wolff, 1995).

For PSI categories above the numerical level of the 0_3 NAAQS, staff again drew in part upon the risk assessment (Whitfield et al., 1996) done in conjunction with the review of the NAAQS to provide a basis for selecting the breakpoint between the generally unhealthy and very unhealthy categories (corresponding to a PSI value of 200). Our risk assessment estimates that above a level of 0.12 ppm, 8-hour average, healthy individuals (adults and children) at prolonged, moderate exertion would likely experience the following risks: (1) Approximately 50 percent are estimated to experience temporary moderate lung function impairment, (2) approximately 20 percent are estimated to experience temporary large lung function impairments, and (3) approximately 10 to 15 percent are estimated to experience temporary moderate to severe respiratory symptoms (e.g., chest pain and aggravated cough). Individuals with asthma or other respiratory conditions would be more severely impacted than healthy individuals, leading some to increase medication usage and seek medical attention, such as increased doctor visits, increased emergency room and clinic visits, and increased hospital admissions. Staff judged that it was appropriate to characterize risks at these levels and above as being very unhealthy. The draft breakpoint between the two new categories (corresponding to a PSI value of 150) was set at 0.10 ppm, 8-hour average. This is the level at which staff judged that exposures are associated with an increase in the number of individuals who could potentially experience effects, including possible respiratory effects in the general population and a greater likelihood of respiratory symptoms and breathing difficulty in sensitive groups. For many locations across the country, this 8-hour average breakpoint of 0.10 ppm approximately corresponds to a 1-hour average concentration of 0.12 ppm, the level of the 1-hour 0_3 standard.

Since no human health effects information was available for 8-hour average O_3 concentrations at significantly higher levels, the breakpoints at the upper end of the PSI scale (between the very unhealthy and hazardous categories and the SHL which corresponds to the top of the PSI scale of 500) were retained in terms of the existing 1-hour average concentrations.

3. Related Informational Materials

In April, 1998, we put on the AIRNOW Web site a draft booklet, called ''SMOG—Who Does It Hurt? What You Need To Know About Ozone and Your Health,'' that provides information for the general public about O_3 health effects and is based on

[5] For the 1998 O_3 season, State and local air agencies could use either the staff draft revised O_3 sub-index based on the 8-hour O_3 standard, or the PSI based on the 1-hour O_3 standard.

[6] The staff draft recognized that groups may be ''sensitive'' or particularly at-risk to the effects of a pollutant due to inherent sensitivity, medical conditions and exposure conditions. More specifically, sensitive groups at increased risk to O_3 effects, include active children and outdoor workers who regularly engage in outdoor activities and people with preexisting respiratory disease (e.g., asthma, chronic obstructive lung disease). Some individuals within these groups are unusually responsive to O_3 and may experience much greater functional and symptomatic effects from exposure to O_3 than the average person in the group.

scientific information gained in the recent review of the O_3 standard. The impetus for the development of this booklet was the recognition that many members of the public would appreciate more detailed information about the health effects associated with different levels of air pollution, especially since better understanding of health effects empowers individuals to make personal decisions regarding exposure reduction. This recognition was encouraged by commenters on the O_3 NAAQS proposal who endorsed increasing the specificity of warnings with regard to health effects. Such commenters noted that citizens are capable of dealing with complex information and that individuals with respiratory disease and their families appreciate such information. ''SMOG—Who Does It Hurt?'' was designed to provide, in simple language, enough detail for individuals to understand who is at most risk from O_3 exposure and why, the nature of O_3 health effects, and a detailed explanation of how individuals can reduce the likelihood of exposure using common everyday activities as examples. This booklet was also intended to support programs such as the Ozone Mapping Project and State/local community action programs.

Currently, there are other materials available that provide information about O_3 and the PSI on the AIRNOW web site. Information about ground-level as contrasted to stratospheric O_3 may be found in EPA's publication ''Ozone: Good Up High, Bad Nearby.'' The EPA's video ''Ozone Double Trouble'' also provides information about ground-level and stratospheric O_3 and the health effects associated with exposure to ground-level O_3, or smog. A short fact sheet, called the ''Air Quality Guide,'' provides information about O_3 health effects and the sources of ground-level O_3. The brochure ''The Pollutant Standards Index'' (EPA 1994) will be updated to reflect final revisions to the PSI and will include as guidance pollutant-specific health effects and cautionary statements.

4. What Was the Feedback on the Staff Draft?

a. Focus Groups. We sponsored eight focus groups to help evaluate how effectively the PSI descriptors and the colors used with the Ozone Map, the related cautionary statements, and the O_3 health effects booklet communicate air quality and health effects information. The focus groups were conducted by a contractor, including the selection of participants, securing meeting facilities, and producing necessary materials. The methods and materials used and the results from the focus groups are summarized below and presented in a final report, ''Report of the Focus Groups on the Ozone Map, the Pollutant Standards Sub-Index for Ozone, and the Ozone Health Effects Booklet,'' (SAIC, 1998) available in the docket.

Background. From August to October, 1998, focus groups were held in eight locations around the country that have different air quality with respect to ozone. Five focus groups, held in Denver, CO; Atlanta, GA; Houston, TX; San Bernardino, CA; and St. Louis, MO; were comprised of members of the general public. A focus group held in Miami, FL was comprised of people over 50 years of age with chronic lung disease (asthma, chronic bronchitis, or emphysema). Another focus group, held in Chicago, IL was comprised of urban parents of children with asthma. Lastly, in October, a focus group was conducted in Los Angeles that was comprised of journalists. Twelve participants and three alternates were recruited for each of the eight focus groups. Participants in the general public focus groups were selected to fit a profile that matched the demographic characteristics of each city in terms of ethnicity, age, gender, and education level. The participants in the Miami and Chicago focus groups were selected to represent target audiences that EPA believes may benefit most from understanding and applying the information provided by the PSI, the Ozone Map, and the O_3 health effects booklet. Journalists were selected as a target audience because they use these informational materials to inform and educate the public.

At the focus groups, participants were asked about various versions of the Ozone Map, and the PSI descriptors presented in the legends of the maps, related informational materials such as the cautionary statements and O_3 health effects booklet, and the Index name. Four different versions of the Ozone Map were compared for effectiveness in conveying information about air quality and associated health effects. Each version of the map showed O_3 levels in the eastern third of the U.S. on a day with high O_3 concentrations. The first three maps differed only in the descriptors used in the legend (Maps 1 and 2) and in the addition of the definition of sensitive groups to the bottom of the map (Map 3). The fourth map used two shades of yellow in the moderate category to depict a subcategory that could be associated with a limited health message. The comparison of these maps evaluated the most basic configuration of information, the colors and descriptors associated with different PSI categories, which are used not only with the Ozone Map, but are also often used in newspaper reports. With a minimal introduction, the participants were asked questions about each map to determine if they understood what that map says about air quality and associated health effects. In addition, the four maps were displayed side-by-side and participants were asked: Which map does the best job of communicating whether air quality was good or bad for your health? Which map did you prefer?

Lastly, because comments received earlier from many State and local agencies indicated a preference for the name ''Air Quality Index (AQI),'' rather than the ''PSI,'' participants in four of the seven focus groups (Atlanta, Houston, Miami and Chicago) were asked which of two names (Pollutant Standards Index or Air Quality Index) they preferred and why.

Participants also were shown the cautionary statements included with the staff draft (and used in conjunction with the Ozone Map) for the ''moderate,'' ''unhealthy for sensitive groups,'' and ''generally unhealthy'' categories, and were asked questions to evaluate the effectiveness of the statements in providing cautionary information. In addition, the O_3 health effects booklet, ''SMOG—Who Does It Hurt?'' was evaluated to assess how well it conveys information in an easily understandable form about three basic concepts, O_3 health effects, sensitive groups, and ways to minimize exposures of concern. The booklet was designed to communicate these three basic concepts that staff believe are important to enhance people's understanding of the PSI. Participants read the booklet and then answered questions to determine if they understood the three basic concepts.

Results. The results of the focus groups held across the nation were fairly consistent. Only the results pertaining to the maps and descriptors are discussed below, since these results were considered in the development of this proposal. Results pertaining to the cautionary statements and the O_3 health effects booklet have been considered in revising these related informational materials.

The messages of the maps were generally well understood. Comments indicated that the descriptor ''unhealthy for sensitive groups'' communicates the intended health effects information. Participants identified that at this level only members of sensitive groups, and not the general population, should be concerned about personal exposure.

Many participants in each group preferred the simpler descriptor ''unhealthy'' to ''generally unhealthy.''

Considering the first three maps, participants commented that the definition of sensitive groups, added in Map 3, provides information that they found useful. Whereas most participants expected the sensitive groups to include those with respiratory diseases, such as asthma, the inclusion of healthy active children and outdoor workers in the definition of sensitive group was a surprise to many participants. The majority of participants agreed that Map 3 communicated air quality and health effects information most effectively, and it was also the preferred Map. There were a couple of participants in each group who preferred a simpler map.

The responses from the focus groups about Map 4 reflected confusion on the part of many participants about the two shades of yellow used to depict the moderate category. This confusion was due in part because only one shade of yellow was apparent in the legend. Although many participants understood that the lighter shade of yellow represented better air quality, many felt this information was of questionable value since the legend did not explain what this meant in terms of a health message. Some noted that without an associated health message, it was not clear why different colors or shadings would be used to depict the ''moderate'' category. As part of further discussion on the cautionary statement associated with the ''moderate'' category, participants learned that there was, in essence, a subcategory at the upper end of this range for extremely sensitive individuals. Some participants then questioned why the lower end of the moderate range should not just be included in the good category if there was no associated health message.

Almost all of the participants preferred the name Air Quality Index to Pollutant Standards Index. In general, participants felt that the name Air Quality Index communicates what the index is about more effectively than the name Pollutant Standards Index. Participants noted, for example, that the name Pollutant Standards Index does not indicate that the index is about air quality rather than pollution in general.

b. State/local agencies. In the many meetings with State and local agencies and national and regional associations, one key issue that continued to be discussed in the context of the Ozone Map and community action programs was the issue of what colors to associate with the ''unhealthy for sensitive groups'' and ''generally unhealthy'' categories in particular. These discussions typically focused on which category should be associated with the color red. As at the January workshop, some have maintained that red should be used for the ''unhealthy for sensitive groups'' category. Others expressed the view that red should be used when air quality is in the ''generally unhealthy'' category and that orange should be used for the ''unhealthy for sensitive groups'' category. These commenters have argued that given the form of the standard, using red at the level of the standard could allow many days to be classified as ''code red'' days in community action programs, even when the standard is attained in that area and public health is being protected. One commenter from a State agency that used the categories and health advisories from the staff draft, together with the color orange when air quality was in the ''unhealthy for sensitive groups'' category and red when air quality was in the ''generally unhealthy'' category, indicated that their agency encouraged the same emissions reductions activities when air quality was in either category. The commenter reported that people appeared to understand the difference in the health advisories and to take both levels of air quality advisories seriously.

C. What Is the Basis for the Proposed Revisions?

The primary consideration that shaped these proposed revisions is the importance of providing nationally uniform health information associated with daily ambient levels of the air pollutants included in the index, consistent with the requirement of section 319 of the Act for an index to achieve national uniformity in daily air quality reporting. More specifically, the revisions to the O_3 and PM NAAQS provide the basis for the proposed specific changes to the PSI sub-indices for O_3 and PM to maintain the relationship between an index value of 100 and the level of the NAAQS, and to establish the relationships between ambient concentrations of these pollutants and index values across the full scale of index values from 0 to 500. The proposed general changes to the structure of the PSI and to related informational materials are based on the expanded understanding that emerged during these reviews as to the nature of the relationships between exposure to ambient concentrations of these pollutants and the health effects likely to be experienced, consideration of the implications of changes for the other pollutants, and the broad input from State and local agencies and the public discussed above. The proposed general changes to the PSI and related informational materials will expand the use of the PSI to provide more pollutant-specific health information, especially when ambient concentrations are close to the level of the primary NAAQS.

1. What Are the Proposed General Changes?

a. Categories and related descriptors, index values and colors. The PSI currently incorporates the pollutants O_3, PM, CO, SO_2, and NO_2. Index values range from 0 to 500,[7] and the index is segmented into five categories named by descriptor words that were chosen to characterize the relationship between daily air quality and public health. To reflect better the current understanding of the health effects associated with exposure to these air pollutants, we are proposing to revise the PSI index values, descriptors, and associated colors as shown below in Table 1.

[7] For NO_2, the index ranges from 200 to 500, since there is no short-term NAAQS for this pollutant.

TABLE 1.—PROPOSED CATEGORY INDEX VALUES, DESCRIPTORS, AND COLORS

Index Values	Descriptor	Color	Purpose
0–50	Good	Green	Convey positive message about air quality.
51–100	Moderate	Yellow	Convey message that daily air quality is acceptable from public health perspective, but every day in this range could result in potential for chronic health effects; and for O_3, convey a limited health notice for extremely sensitive individuals.
101–150	Unhealthy for Sensitive Groups.	Orange	Health message for members of sensitive groups.
151–200	Unhealthy	Red	Health advisory of more serious effects for sensitive groups and notice of possible effects for general population when appropriate.
201–300	Very Unhealthy	Purple	Health alert of more serious effects for sensitive groups and the general population.
301–500	Hazardous	Maroon	Health warnings of emergency conditions.

These proposed changes reflect the addition of a new category above the level of the standard (above a PSI of 100), created by dividing the current ''unhealthful'' category into two categories. The ''unhealthy for sensitive groups'' category would start just above the level of the standard, and index values would range from 101 to 150. The ''unhealthy'' category would start at an index value of 151 and range to an index value of 200.

When air quality is in the ''unhealthy for sensitive groups'' range, people that are in the sensitive group, whether the sensitivity is due to medical conditions, exposure conditions, or inherent sensitivity, may experience exposures of concern. However, exposure to ambient concentrations in this range are not likely to result in exposures of concern for most healthy people. The descriptor ''unhealthy for sensitive groups'' was chosen to convey this message clearly. Participants in focus groups clearly understood that ''sensitive groups'' does not refer to the general public, indicating that this descriptor effectively communicates the intended health message. This category would include a caution that while perhaps of interest to all citizens, would be of particular interest to individuals and families of individuals who are members of sensitive groups.

As air quality moves into the ''unhealthy'' range, exposures are associated with an increase in the number of individuals who could potentially experience effects and includes a greater proportion of members of the general public. Based on input received on the staff draft revisions, the descriptor ''unhealthy'' appropriately characterizes air quality in this range and does not need to be modified further by the word ''generally'' as in the staff draft.

In addition to an increasing number of exposures of concern, when air quality moves into the ''unhealthy'' range and above, individuals who were affected at lower levels, typically members of sensitive groups, are likely to experience more serious health effects than members of the general public. To reflect this understanding, it is appropriate to convey two messages in the cautionary statements for both the ''unhealthy'' and ''very unhealthy'' categories. One message is directed to members of sensitive groups, and the other is directed to the general public. The use of a distinct cautionary message for members of sensitive groups is entirely consistent with an original goal that the index be based on the relationships between pollutant concentrations and adverse health effects within various groups, e.g., aggravation of disease in people with respiratory disease and incidence of respiratory effects in healthy people. Guidance on pollutant-specific cautionary statements related to the categories of the PSI is discussed below in section II.C.3.

We are not proposing to add a new category or subcategory below the numerical level of the standard to caution extremely sensitive individuals, as was previously contemplated or included in the staff draft. While commenters on the O_3 NAAQS proposal broadly endorsed expanding the use of the PSI to provide more specific health information around the level of the standard, many commenters did not support the addition of another category below the level of the standard to convey this message. Many commenters expressed the view that the addition of two new categories would unduly complicate the index. Further, we recognize that while such a category may be meaningful and appropriate for O_3, based on the expanded information from the most recent O_3 NAAQS review, it would not be an appropriate distinction for the other pollutants included in the index. Rather, this proposal addresses these issues by setting the breakpoint between good and moderate categories for O_3 at the concentration where a limited health message for extremely sensitive individuals could appropriately be conveyed and by providing guidance on pollutant-specific cautionary statements for use in conjunction with PSI reporting (discussed in section II.C.3 below and in a related guidance document). This approach is intended to retain simplicity in the index while allowing for more detailed cautionary information to be made available to the public when appropriate.

Consistent with the overarching goal of national uniformity in the reporting of air quality, we are proposing that the specific colors listed in Table 1 be associated with each category. While the PSI can be reported without the use of colors (through text and numbers alone), when the index is reported using colors, we propose to require that only these specified colors be used. Three examples of PSI reports that use color are the color bars that appear in many newspapers, the color scales on State and local agency web sites, and the color contours of the Ozone Map. We have participated in many discussions with State and local agencies and associations regarding which specific colors should be associated with the PSI categories, particularly above the level of the standard. These discussions typically have been in the context of either the Ozone Mapping Project or community action programs. It is clear that the color associated with a category can be part of the health effects and cautionary message being conveyed, and that different colors convey different messages to different people. Were various State and local agencies to use different colors to represent the same category, and thus the same level of air quality, it could well send a confusing message about air quality and associated health effects to the public. Because it is a fundamental goal of the PSI to

provide nationally uniform information about daily air quality and the public health messages that are appropriately associated with various daily air quality levels, in a format that is timely and easily understood, we believe that requiring specified colors when the PSI categories are reported in color format is both necessary and appropriate.

Further, we believe that the specific colors being proposed are appropriate for the health messages being conveyed in each category. As discussed in the section above, the results of the focus groups indicate that, above the level of the standard, the combination of colors and descriptors proposed by us effectively communicates the intended health effects message. The comments of focus group participants (SAIC, 1998) support the generally accepted view that the color red sends a strong cautionary message. We believe that this color is most appropriate to use when effects are likely to occur in the general population, and when more serious effects are likely in members of sensitive groups. We believe that the combination of the use of orange and red for the two categories above the level of the standard appropriately conveys a gradation of concern that is consistent with our understanding of the likely public health effects associated with these categories. We note that the numerical levels of the 8-hour average O_3 NAAQS and the 24-hour average PM NAAQS were set in conjunction with specific forms of these standards which have the effect of allowing multiple days a year during which the level of the standard can be exceeded. These combinations of levels and forms provide the requisite degree of public health protection, even when some days reach air quality levels above the level of the standards. Thus, it is consistent with the selection and definition of these NAAQS that a gradation of colors be used, and that the color red be specified for the PSI category with a stronger cautionary message.

As an alternative to requiring the use of specified colors, we are soliciting comment on the option of recommending, rather than requiring, the use of these colors when reporting agencies choose to report the PSI in color format. In soliciting comment on this alternative, we are seeking to allow communities maximum flexibility in PSI reporting, while still preserving a nationally uniform air quality index. We therefore request that commenters addressing this issue discuss how this more flexible approach would satisfy the statutory language requiring a nationally uniform air quality index if different colors may be used across the nation to represent the same range of air quality.

b. Reporting requirements. We propose to change 40 CFR part 58.50 to require reporting of the PSI in all Metropolitan Statistical Areas (MSAs)[8] with a population over 350,000, instead of all urbanized areas with a population over 200,000. This change is being proposed for consistency with the other monitoring regulations in part 58, which are or will be based on MSAs. This change does not, however, have a significant impact on who is required to report, since virtually the same number of cities would be covered under the proposed reporting requirement as are covered under the existing requirement.

Consistent with early input from State and local agencies, we are proposing to change the rounding conventions used to calculate index values corresponding to pollutant concentrations at and above the numerical level of the NAAQS to be consistent with the rounding conventions used in defining the NAAQS for each pollutant. This will avoid situations where a health advisory could be issued that describes the air as unhealthy, when in fact the numerical level of the standard has not been exceeded. The revised rounding conventions are presented below in the proposed appendix G—Uniform Air Quality Index and Daily Reporting.

The proposed rule retains the requirements to identify the area for which the PSI is being reported, the time period covered by the report, the ''critical'' pollutant for which the reported PSI value was derived, the PSI value, and the associated category descriptor. The proposed rule adds two requirements, (1) to report the associated category color if a color format is used and, (2) to report all PSI values greater than 100. Because different sensitive groups are at-risk from different pollutants, issuing advisories for all sensitive groups who may be affected at PSI values greater than 100 clearly improves public health protection. The proposed rule continues to encourage, but does not require, that PSI reports include the PSI for sub-divisions of the MSA (if there are important differences in air quality across sub-divisions of the MSA), the actual pollutant concentrations, possible causes for high index values, and appropriate health effects and cautionary statements (based on the guidance discussed in section II.C.3 below). These topics are also discussed in our updated ''Guideline for Public Reporting of Daily Air Quality—Pollutant Standards Index (PSI)'' (EPA 1998b).

The proposed rule emphasizes the importance of forecasting the PSI by specifying that forecasted values should be reported, when possible, but does not require that forecasted values be reported. Given the importance of the O_3 sub-index in a large number of MSAs, and the use of an 8-hour averaging time for calculating the O_3 sub-index value, forecasting the O_3 index value is now more beneficial than before. For a health advisory system to be effective, people need to be notified as early as possible to be able to avoid exposures of concern. Because the proposed O_3 sub-index is based on the 8-hour O_3 NAAQS, forecasting O_3 concentrations clearly would have increased value in providing cautionary statements to the public. In the past, when a health advisory was issued because the PSI value of 100 had been exceeded for the 1-hour O_3 NAAQS, people potentially had time to avoid exposures of concern because O_3 levels tend to remain elevated for several hours during the day. With an 8-hour standard, however, this would not be the case, since by the time the level of the 8-hour NAAQS has been exceeded and a health advisory issued, the potential for exposures of concern would likely have passed for that day. Forecasting 8-hour maximum O_3 concentrations would facilitate the risk-reduction function of the PSI by giving people time to limit or avoid exposures of concern. We recognize that many State and local air agencies are already issuing health advisories based on forecasted O_3 concentrations. Since we have determined that forecasting would add much to the benefits of PSI reporting, we will be making available guidance on starting a forecasting program (EPA 1999) in an area or MSA where forecasting is not presently done. Included in the document will be guidance on using hourly O_3 concentrations as predictors for 8-hour averages.

c. Index name. Many State and local agencies have encouraged us to change the name of the PSI to the Air Quality Index, or AQI, since many agencies already use the name AQI when reporting the PSI value to the public. Most participants in the focus groups preferred the name AQI, commenting that it more clearly identified the index as relating to the quality of the air rather than to environmental pollution in general. On the other hand, we note that changing the name may result in confusion due to historical familiarity and usage, not only in the U.S. but

[8] A complete list of MSAs and their boundaries can be found in the Statistical Abstract of the United States (1998).

internationally, since the PSI has been used by many countries throughout the world for many years. Based on these considerations, we are soliciting comment on changing the name of the Pollutant Standards Index (PSI) to the Air Quality Index (AQI).

2. What Are the Proposed Changes to the Sub-Indices?

To conform to the proposed general changes to the PSI discussed above, and to reflect the recent revisions to the O_3 and PM NAAQS, we are proposing changes to the sub-indices for O_3, PM, CO, and SO_2; no conforming changes are necessary for the NO_2 sub-index. The proposed sub-indices are summarized below in Table 2, in terms of pollutant concentrations that correspond to breakpoints in the index, and are discussed in the following sections. These sub-indices are presented in more detail in the proposed appendix G to reflect the proposed changes to the numerical rounding conventions for calculating index values.

TABLE 2.—BREAKPOINTS FOR O_3, $PM_{2.5}$, PM_{10}, CO, AND SO_2 SUB-INDICES

PSI value	O_3		PM		CO, 8-hr (ppm)	SO_2, 24-hr (ppm)
	8-hr (ppm)	1-hr (ppm)	$PM_{2.5}$, 24-hr (μg/m³)	PM_{10}, 24-hr (μg/m³)		
50	0.07	.....	15	50	4	0.03
100	0.08	0.12	65	150	9	0.14
150	0.10	0.16	100*	250	12	0.22
200	0.12	0.20	150*	350	15	0.30
300	0.40 (1-hr)	0.40	250*	420	30	0.60
400	0.50 (1-hr)	0.50	350*	500	40	0.80
500	0.60 (1-hr)	0.60	500*	600	50	1.00

*If a different SHL for $PM_{2.5}$ is promulgated, these numbers will change accordingly.

a. Ozone sub-index. On July 18, 1997, we revised the O_3 primary NAAQS to replace the 1-hour standard with a new standard with an 8-hour average at a level of 0.08 ppm and a form based on the 3-year average of the annual fourth-highest daily maximum 8-hour average O_3 concentrations measured at each monitor within an area (62 FR 38856–38896). These revisions were based on findings from the most recent review of the NAAQS indicating that the new primary standard will provide increased protection to the public, especially children active outdoors and other sensitive groups, against a wide range of O_3-induced health effects, including decreased lung function; increased respiratory symptoms; hospital admissions and emergency room visits for respiratory causes, among children and adults with pre-existing respiratory disease such as asthma; inflammation of the lung; and possible long-term damage to the lungs. In setting this standard, we recognized that there is no discernible threshold below which health effects do not occur, that the standard is not risk free, and, thus, that exposures of concern are possible below the numerical level of the standard for some extremely sensitive individuals.

Based on feedback on the staff draft, above a PSI value of 100, we propose to adopt the revisions to the O_3 sub-index that were presented in the staff draft, and to make changes to the staff draft below that value. The proposed revisions to the O_3 sub-index above the level of the standard, and the rationale for these proposed revisions, are discussed above in section II.B.2. Below the level of the standard, at a PSI value of 50, we propose that 0.07 ppm, 8-hour average, be the breakpoint between the good and moderate categories. As in the staff draft, this concentration is judged by staff as an appropriate breakpoint for starting to convey a limited health message for extremely sensitive individuals. This breakpoint was adopted because comments received indicated that the draft subcategories within the moderate category created confusion, and that having a distinct subcategory within moderate with no health message was unnecessary. We recognize that this breakpoint defines a category with a somewhat narrower range of concentrations. However, we believe this breakpoint makes an important distinction to emphasize the limited health message for extremely sensitive individuals. The effect of this range on forecasting is addressed in the forecasting guidance. Beyond this issue, comments received on the staff draft O_3 sub-index, discussed in section II.B.4, have been generally positive and have focused on the presentation of the sub-index through the Ozone Mapping Project and on the wording of associated cautionary statements included as guidance. These proposed revisions are consistent with the proposed general changes to the PSI discussed above in section II.C.1.a.

These proposed revisions reflect the new 8-hour O_3 NAAQS and will in almost all areas result in a more health protective index than the current index based on the 1-hour O_3 standard. However, we recognize that a very small number of areas in the U.S. have atypical air quality patterns, with very high 1-hour daily peak O_3 concentrations relative to the associated 8-hour average concentrations. In such areas, the use of the current 1-hour sub-index may be more health protective on a given day than the proposed 8-hour sub-index. To allow for the reporting of the more health protective sub-index value, we also propose to retain the 1-hour sub-index at and above PSI values of 100 and to allow the reporting of the higher of the two O_3 sub-index values. Thus, both the new 8-hour and the current 1-hour sub-indices, as shown in Table 2, are included in the proposed appendix G. To conform to the proposed general changes to the PSI, a breakpoint of 0.16 ppm, 1-hour average, has been added to the 1-hour sub-index at a PSI value of 150. This value is the mid-point of the breakpoints at PSI values of 100 and 200. Since for the large majority of areas the 8-hour sub-index will be more health protective, we are not proposing to require all areas to calculate both sub-index values. Rather, we are proposing to allow areas the flexibility to calculate both sub-index values and, when both sub-index values are calculated, to require that the higher value be reported. We are specifically soliciting comment on this proposed approach.

b. PM sub-index. On July 18, 1997, we revised the PM NAAQS by adding a new set of standards for fine particles, or $PM_{2.5}$, set at levels of 15 μg/m$_3$ (annual) and 65 μg/m$_3$ (24-hour average) (62 FR 38652–38760). These revisions were based on findings from the most recent review of the PM NAAQS that recently published studies have

indicated that serious health effects were more closely associated with the levels of the smaller particle subset of PM_{10}. These health effects include premature mortality and increased hospital admissions and emergency room visits, primarily in the elderly and individuals with cardiopulmonary disease; increased respiratory symptoms and disease in children and individuals with cardiopulmonary disease such as asthma; decreased lung function, particularly in children and individuals with asthma; and alterations in respiratory tract defense mechanisms. In addition, PM_{10} standards were retained at the same levels of 50 μg/m³ (annual) and 150 μg/m³ (24-hour average) to continue to provide protection against health effects associated with the coarse particle subset of PM_{10}, including aggravation of asthma and respiratory infections. To reflect these revisions to the PM NAAQS, we are proposing to add a new sub-index for $PM_{2.5}$, and to make conforming changes to the sub-index for PM_{10}, consistent with the proposed general changes to the PSI described above in section II.C.1.a. These proposed sub-indices are summarized above in Table 2 and discussed below.

New $PM_{2.5}$ sub-index. Consistent with the basic structure of the PSI, an index value of 100 corresponds to the level of the 24-hour $PM_{2.5}$ NAAQS, 65 μg/m³, and an index value of 50 corresponds to the level of the annual NAAQS, 15 μg/m³. Also consistent with the basic structure of the PSI, the upper bound index value of 500 corresponds to the SHL, established in section 51.16 of the CFR under the Prevention of Air Pollution Emergency Episodes program. The SHL is set at a level that represents an imminent and substantial endangerment to public health. In mid-1999, we will propose revisions to the Prevention of Air Pollution Emergency Episodes program, which will include an SHL for $PM_{2.5}$. In advance of proposing an SHL for $PM_{2.5}$, we are now proposing to establish a $PM_{2.5}$ concentration [9] to be associated with a $PM_{2.5}$ index value of 500.

In proposing to establish this $PM_{2.5}$ concentration to be associated with a $PM_{2.5}$ index value of 500, the primary focus is on evidence linking mortality with increases in PM concentration. The current SHL for PM_{10} (600 μg/m³) was established on the basis of the increased mortality found during historical wintertime pollution episodes in London, where PM concentrations, measured as British Smoke, were in the range of 500 to 1000 μg/m³ (52 FR 24687–24688). We believe that these studies still provide the best scientific support for significant harm levels for PM. British Smoke provides an approximate measurement of fine particles, since it is considered to measure PM with a cut-point of approximately 4.5 microns. While some coarse mode particles are included, it has been found that mainly fine mode particles are collected using the British Smoke method. In establishing the SHL for PM_{10}, we used an assumption that a concentration of PM_{10} can be estimated by adding 100 to a concentration measured in terms of British Smoke (52 FR 24688). For the purposes of proposing to establish a $PM_{2.5}$ concentration to be associated with a $PM_{2.5}$ index value of 500, we are assuming that particle mass concentration measured by the British Smoke method is approximately equivalent to a $PM_{2.5}$ mass concentration.

For intermediate breakpoints in the PSI between values of 100 and 500, $PM_{2.5}$ concentrations are proposed that generally reflect a linear relationship between increasing index values and increasing $PM_{2.5}$ values. The available scientific evidence of health effects related to population exposures to $PM_{2.5}$ concentrations between the 24-hour NAAQS level and the proposed SHL suggest a continuum of effects in this range, with increasing $PM_{2.5}$ concentrations being associated with increasingly larger numbers of people likely experiencing serious health effects (62 FR 38675; Staff Paper, p. VII–27) The proposed generally linear relationship between PSI values and $PM_{2.5}$ concentrations in this range, rounded to increments of 50 μg/m³ to reflect the approximate nature of such a relationship, is consistent with this evidence.

Conforming changes to the PM_{10} sub-index. Consistent with the retention of the levels of the PM_{10} NAAQS, we are proposing to retain the PM_{10} sub-index generally and to add a new breakpoint at an index value of 150 to conform to the proposed additional PSI category. We propose that this breakpoint be set at a PM_{10} 24-hour average concentration of 250 μg/m³, the mid-point between the breakpoints associated with index values of 100 and 200. We believe that the PM_{10} sub-index, with this conforming change, remains appropriate for the public health protection purposes of the PSI.

c. *Conforming changes to the CO and SO_2 sub-indices.* Since the current PSI sub-indices reflect the current NAAQS for CO and SO_2, the only change being proposed today for these sub-indices is to add a breakpoint to each sub-index at an index value of 150 to conform to the proposed additional PSI category. We propose that these breakpoints be set at concentrations at the mid-points between the breakpoints associated with index values of 100 and 200, consistent with the approach described above for conforming changes to both the 1-hour O_3 sub-index and the PM_{10} sub-index. These proposed breakpoints are summarized in Table 2 and presented in more detail in appendix G to reflect the proposed changes to the numerical rounding conventions used to calculate index values. These sub-indices will be reviewed in conjunction with the future reviews of the CO and SO_2 NAAQS.

3. What are the Changes to Related Informational Materials?

We have edited related informational materials on O_3 prepared in conjunction with the staff draft O_3 sub-index, such as the cautionary statements, to reflect the input from the focus groups and from national, State and local agencies and associations. The edits include some of the wording changes suggested to the cautionary statements, as well as clarification of the health/air quality message associated with the moderate category. In the ''unhealthy'' and ''very unhealthy'' categories, there are distinct cautionary statements for members of sensitive groups and the general public. In addition, because different conditions make individuals and groups susceptible to the effects of different air pollutants, we have developed pollutant-specific health effects and cautionary statements for the other pollutants in the index, including $PM_{2.5}$, PM_{10}, CO, SO_2, and NO_2. The health effects and cautionary statements may be found on AIRLINKS (http://www.epa.gov/airlinks). Our draft guidance on PSI reporting, ''Guideline for Public Reporting of Daily Air Quality—Pollutant Standards Index (PSI)'' (EPA 1998b), which includes the health effects and cautionary statements, is available in the docket and on AIRLINKS.

The brochure ''The Pollutant Standards Index'' (EPA 1994), contains information about the general health effects associated with each category, and precautions that sensitive groups and the general public should take to avoid exposures of concern. Currently, it contains one set of health effects and cautionary statements that are generally applicable to all of the pollutants currently included in the PSI, and does not identify specific sensitive groups for each of the pollutants. In changes to this

[9] Should the final SHL for $PM_{2.5}$, when promulgated, be different from this concentration, we will revise this $PM_{2.5}$ sub-index accordingly.

brochure, we will revise the categories and descriptors to be consistent with final revisions to the PSI, identify sensitive groups in the health effects statements for each of the pollutants, and will include the pollutant-specific health effects and cautionary statements discussed above.

The booklet, ''SMOG—Who Does It Hurt?,'' was developed using health effects information from the review of the standard and therefore already incorporates the concepts of sensitive groups and a continuum of effects to background levels of O_3. Revisions to this booklet will be based on final revisions to the PSI, information from the focus groups, and comments from national, State and local agencies and associations. Based on these comments, the distinction between stratospheric and ground-level O_3 will be made clearer, and the section ''What does exertion have to do with O_3-related health effects?'' will include clarification of the effect of individual conditioning on exertion levels. In addition, we are planning to develop a shorter, summary brochure about O_3 health effects to complement the ''SMOG—Who Does It Hurt?'' booklet, to translate both ''SMOG—Who Does It Hurt?'' and the shorter summary booklet into Spanish, and to develop informational materials about O_3 health effects for primary care providers. All of these documents will be made available when revisions to the PSI are final, including on the AIRNOW web site.

III. Regulatory and Environmental Impact Analyses

A. Executive Order 12866: OMB Review of ''Significant Actions''

Under Executive Order 12866, the Agency must determine whether a regulatory action is ''significant'' and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The order defines ''significant regulatory action'' as one 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 or recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. The OMB has advised us this proposal should be construed as a ''significant regulatory action'' within the meaning of Executive Order 12866. Accordingly, this action was submitted to the OMB for review. Any changes made in response to OMB suggestions or recommendations will be documented in the public record and made available for public inspection at EPA's Air and Radiation Docket Information Center (Docket No. A–98–20).

B. Regulatory Flexibility Analysis/Small Business Regulatory Enforcement Fairness Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. Under 6 U.S.C. 605(b), this requirement may be waived if EPA certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and governmental entities with jurisdiction over populations less than 50,000 people.

Today's proposal to revise the PSI program modifies existing air quality reporting requirements for MSA's with populations over 350,000 people. Today's proposal, if promulgated, will not establish any new regulatory requirements affecting small entities. On the basis of the above considerations, EPA certifies that today's proposal will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. Based on the same considerations, EPA also certifies that the new small-entity provisions in Section 244 of the Small Business Regulatory Enforcement Fairness Act (SBREFA) do not apply.

C. 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 1 year.

EPA has determined that today's proposal, if promulgated, would not include a Federal mandate that may result in estimated costs of $100 million in any 1 year to either State, local, or tribal governments, in the aggregate, or to the private sector. Accordingly, EPA has determined that the provisions of section 202 of the UMRA do not apply to this rulemaking.

D. Paperwork Reduction Act

Today's proposal does not establish any new information collection requirements beyond those which are currently required under the Ambient Air Quality Surveillance Regulations in 40 CFR part 58 (OMB #2060–0084, EPA ICR No. 0940.15). Therefore, the requirements of the Paperwork Reduction Act do not apply to today's action.

E. Executive Order 13045: Children's Health

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR19885, April 23, 1997), requires Federal agencies to ensure that their policies, programs, activities, and standards identify and assess environmental health and safety risks that may disproportionately affect children. In today's proposal, EPA identified children as one of the sensitive groups which may be at increased risk of experiencing the effects of concern following exposure to ozone. The proposed PSI categories, descriptors, and cautionary statements all take into consideration the increased health risk to children which may result from such exposures. Therefore, today's action does comply with the requirements of E.O. 13045.

F. Executive Order 12848: Environmental Justice

Executive Order 12848 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations in the United States.

The nature of today's action is to inform the general public, including minorities and low-income populations, about the nature of the air pollution in the areas they live. Today's action establishes a uniform tool for States to use to develop programs which will caution particularly sensitive people to minimize their exposures and educate the public about general health effects

associated with exposure to different pollution levels. States may also use information established as part of the PSI to trigger programs designed to reduce emissions to avoid exceedances of the NAAQS. Therefore, today's action will help facilitate public participation, outreach, and communication in areas where environmental justice issues are present.

G. Executive Order 12875: Enhancing Intergovernmental Partnerships

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 we will consult with those governments. If EPA complies by consulting, Executive Order 12875 requires us to provide to OMB a description of the extent of our 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 us 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 rule implements requirements specifically set forth by the Congress in section 319 of the Act without the exercise of any discretion by us. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

H. 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, or EPA will consult with those governments. If EPA complies by consulting, Executive Order 13084 requires us to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of our 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 us 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.''

Today's rule implements requirements specifically set forth by the Congress in section 319 of the Act without the exercise of any discretion by us. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, 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 involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

IV. References

EPA, (1994) ''Measuring Air Quality: The Pollutant Standards Index,'' U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards (MD–10), Research Triangle Park, NC, 27711, EPA 451/K–94–001.

EPA, (1997) Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information, OAQPS Staff Paper, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711, EPA–452/R–96–013.

EPA, (1998a) Community Action Programs: Blueprint for Program Design, U.S. Environmental Protection Agency, Office of Mobile Sources, Ann Arbor, MI, EPA 420–R–98–003.

EPA, (1998b) Guideline for Public Reporting of Daily Air Quality—Pollutant Standards Index (PSI), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC, 27711, draft document.

EPA, (1999) Guideline for Starting an Air Pollution Forecasting Program, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC, 27711, in preparation.

Science Applications International Corporation, (1998) Report of Eight Focus Groups on the Ozone Map, the Pollutant Standards Sub-Index for Ozone, and the Ozone Health Effects Booklet, Science Applications International Corporation, McLean, VA.

U.S. Department of Commerce, Statistical Abstract of the United States, 1998, U.S. Bureau of the Census.

Whitfield, R.G.; Biller, W.F.; Jusko, M.J.; Keisler, J.M. (1996) A probabilistic assessment of health risks associated with short-term exposure to tropospheric ozone . Report prepared for U.S. EPA, OAQPS. Argonne National Laboratory; Argonne, IL.

Wolff, G.T., (1995) Letter from Chairman of Clean Air Scientific Advisory Committee to the EPA Administrator, dated November 30, 1995. EPA–SAB–CASAC–LTR–96–002.

List of Subjects in 40 CFR Part 58

Environmental protection, Air pollution control, Air quality surveillance and data reporting, Ambient air quality monitoring network design and siting, Intergovernmental relations, pollutant standards index, Quality assurance program.

Dated: December 1, 1998.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, chapter I of title 40 of the Code of Federal regulations is proposed to be amended as follows:

PART 58—AMBIENT AIR QUALITY SURVEILLANCE

1. The authority citation of part 58 continues to read as follows:

Authority: 42 U.S.C. 7410, 7601(a), and 7619.

2. Section 58.50 is revised to read as follows:

§ 58.50 Index reporting.

(a) The State shall report to the general public through prominent notice an air quality index in accordance with the requirements of appendix G to this part.

(b) Reporting is required by all Metropolitan Statistical Areas with a population exceeding 350,000.

(c) The population of a Metropolitan Statistical Area for purposes of index reporting is the most recent decennial U.S. census population.

3. Appendix G is revised to read as follows:

Appendix G—Uniform Air Quality Index and Daily Reporting

General Requirements

1. What is the PSI?
2. Why report the PSI?
3. Must I report the PSI?
4. What goes into my PSI report?
5. What colors do I use when I report the PSI?
6. Is my PSI report for my MSA only?
7. How do I get my PSI report to the public?
8. How often must I report the PSI?
9. May I make exceptions to these reporting requirements?

Calculation

10. How does the PSI relate to air pollution levels?
11. Where do I get the pollutant concentrations to calculate the PSI?
12. Do I have to forecast the PSI?
13. How do I calculate the PSI?
14. How do I use Table 2 and Equation 1 to calculate the PSI?

Background and Reference Materials

15. What additional information should I know?
16. References

General Requirements

1. What Is the PSI?

The Air Quality Index (PSI) is a tool that simplifies reporting air pollution to the general public. The PSI incorporates into a single index concentrations of 5 criteria pollutants: ozone (O_3), particulate matter (PM), carbon monoxide (CO), sulfur dioxide (SO_2), and nitrogen dioxide (NO_2). The scale of the index is divided up into general categories that are associated with health messages.

2. Why Report the PSI?

The PSI offers various advantages:

a. It is simple to create and understand.

b. It conveys the health implications of air quality.

c. It promotes uniform use throughout the country.

3. Must I Report the PSI?

You must report the PSI daily if yours is a metropolitan statistical area (MSA) with a population over 350,000.

4. What Goes Into My PSI Report?

Your PSI report must contain the following:

a. The reporting area(s) (the MSA or subdivision of the MSA).

b. The reporting period (the day for which the PSI is reported).

c. The critical pollutant (the pollutant with the highest index value).

d. The PSI (the highest index value).

e. The category descriptor and index value associated with the PSI and, if reported in a color format, the associated color. Use only the following descriptors and colors for the six PSI categories:

PSI	Descriptor	Color
0 to 50	"Good"	Green.
51 to 100	"Moderate"	Yellow.
101 to 150	"Unhealthy for Sensitive Groups".	Orange.
151 to 200	"Unhealthy"	Red.
201 to 300	"Very Unhealthy".	Purple.
301 and above	"Hazardous"	Maroon.

When appropriate, your PSI report may also contain the following:

a. The name and index value for other pollutants, particularly those with an index value greater than 100.

b. The index values for sub-areas of the reporting area.

c. Actual pollutant concentrations.

d. Causes for unusual PSI values.

5. What Colors Do I Use When I Report the PSI?

If reporting in color format, you must use the colors listed above. More specifically the colors you must use are defined in the following table for both red, green, blue (RGB) and cyan, magenta, yellow, and black (CMYK) color formulas.[1]

TABLE 1.—COLOR FORMULATIONS FOR REPORTING THE PSI.[2]

Color	R	G	B	C	M	Y	K
Green	0	228	0	224	0	224	30
Yellow	255	255	0	0	0	255	0
Orange	255	126	0	0	132	255	0
Red	255	0	0	255	255	0	0
Purple	153	0	76	0	153	80	102
Maroon	76	0	38	0	76	38	179

[2] The color models are based on a 0–255 scale (e.g., 50 percent is 126).

6. Is My PSI Report for My MSA Only?

Generally, your PSI report applies to your MSA only. However, your report does not apply to just your MSA in two situations:

a. If a significant air quality problem exists (PSI greater than 100) in areas next to your MSA but not in it (for example O_3 concentrations are often highest downwind and outside an urban area), your PSI report should apply to these areas also.

b. If different PSI categories apply to different definable parts of your MSA, you should report a separate PSI for each part of your urban area.

7. How Do I Get My PSI Report to the Public?

You must furnish the daily report to the appropriate news media (radio, television, and newspapers). You may make the daily report publicly available at one or more places of public access, or you may disseminate it by a recorded phone message or a public Internet site.

8. How Often Must I Report the PSI?

You must report the PSI at least 5 days per week. Exceptions to this requirement are in Section 9 below.

9. May I Make Exceptions to These Reporting Requirements?

If the index for a particular pollutant remains below 50 for a season or year, then you may exclude the pollutant from your calculation of the PSI in Section 13.

If the PSI remains below 50 for a year, then you may report the PSI at your discretion.

Calculation

10. How Does the PSI Relate to Air Pollution Levels?

For each pollutant, the PSI transforms ambient concentrations to a scale from 0 to 500. The PSI is related to the National Ambient Air Quality Standard (NAAQS) for each pollutant. The index value of 100 is always associated with the numerical level of the standard for each pollutant. The index value of 50 is associated with annual standards (if they exist) for each pollutant. Higher categories of the index are based on increasingly serious health effects and increasing proportions of the population that are affected. The EPA relates the index to other air pollution concentrations through linear interpolation based on these levels. The PSI is equal to the highest of the numbers corresponding to each pollutant. The pollutant responsible for the highest number (the reported PSI) is called the "critical" pollutant.

11. Where Do I Get the Pollutant Concentrations To Calculate the PSI?

You must use concentration data for four of the five PSI criteria pollutants from the State/Local Air Monitoring Station (SLAMS) or parts of the SLAMS required under 40 CFR

[1] The RGB model is traditionally used for TV or computer monitor colors while CMYK is traditionally used for color printers.

58.20. For PM, you need only calculate and report the PSI on days for which you have measured air quality data (e.g., particulate monitors often report values only every sixth day). You may use particulate measurements from monitors that are not reference or equivalent methods if you can relate these measurements by linear regression to reference or equivalent method measurements.

12. Do I Have to Forecast the PSI?

You should forecast the PSI at least 24-hours in advance using the most accurate and reasonable procedures considering meteorology, topography, availability of data, and forecasting expertise. Since ozone is a dominant pollutant in air pollution and the form of the ozone standard is an 8-hour average, the timing of how the public is informed is an important issue. In order for affected people to take advantage of this information, it is necessary to consider at least a short term forecast or prediction of 8-hour ozone levels for the purposes of reporting the PSI. Guidance to this appendix suggest ways to do this which require less resources than 24-hour advance forecasts (EPA 1999).

13. How Do I Calculate the PSI?

The PSI is the highest value calculated for each pollutant as follows:

a. Truncate the pollutant concentration from the monitor recording the highest concentration in the reporting area to one more than the significant digits used in the NAAQS for that pollutant. This is equivalent to the rounding conventions used in the NAAQS.

b. Using Table 2, find the two breakpoints that contain the concentration.

c. Using Equation 1, calculate the index.

d. Round the index to the nearest integer.

TABLE 2.—BREAKPOINTS FOR THE PSI

These breakpoints—							Equal these PSIs	Category
O_3 (ppm) 8-hour	O_3 (ppm) 1-hour [1]	PM_{10} (μg/m³)	$PM_{2.5}$ (μg/m³)	CO (ppm)	SO_2 (ppm)	NO_2 (ppm)		
0.000–0.069	-	0–54	0.0–15.4	0.0–4.4	0.000–0.034	([2])	0–50	Good.
0.070–0.084	-	55–154	15.5–65.4	4.5–9.4	0.035–0.144	([2])	51–100	Moderate.
0.085–0.104	0.125–0.164	155–254	65.5–100.4 [5]	9.5–12.4	0.145–0.224	([2])	101–150	Unhealthy for sensitive groups.
0.105–0.124	0.165–0.204	255–354	100.5 [5]–150.4 [5]	12.5–15.4	0.225–0.304	([2])	151–200	Unhealthy.
0.125–0.374 (0.155–0.404) [4]	0.205–0.404	355–424	150.5 [5]–250.4 [5]	15.5–30.4	0.305–0.604	0.65–1.24	201–300	Very unhealthy.
([3])	0.405–0.504	425–504	250.5 [5]–350.4 [5]	30.5–40.4	0.605–0.804	1.25–1.64	301–400	
([3])	0.505–0.604	505–604	350.5 [5]–500.4 [5]	40.5–50.4	0.805–1.004	1.65–2.04	401–500	Hazardous.

[1] Areas are required to report the PSI based on 8-hour ozone values. However, there are areas where a PSI based 1-hour ozone values would be more protective. In these cases, the index for both the 8-hour and the 1-hour ozone values may be calculated and the maximum PSI reported.

[2] NO_2 has no short-term NAAQS and can generate a PSI only above a PSI value of 200.

[3] 8-hour O_3 values do not define higher PSI values (≥301). PSI values of 301 or higher are calculated with 1-hour O_3 concentrations.

[4] The numbers in parentheses are associated 1-hour values to be used in this overlapping category only.

[5] If a different SHL for $PM_{2.5}$ is promulgated, these numbers will change accordingly.

If the concentration is equal to a breakpoint, then the index is equal to the corresponding index in Table 2. However, Equation 1 can still be used. The results will be equal. If the concentration is between two breakpoints, then calculate the index of that pollutant with Equation 1. You must also note that in some areas, the PSI based on 1-hour O_3 will be more protective than using 8-hour values (see footnote 1 to Table 2). In these cases you may use 1-hour values as well as 8-hour values to calculate the index and then use the maximum PSI value as the index for O_3.

$$I_p = \frac{I_{Hi} - I_{Lo}}{BP_{HI} - BP_{Lo}}\left(C_p - BP_{Lo}\right) + I_{Lo}.$$

Equation 1

Where I_p = the index for pollutant $_p$

C_p = the truncated concentration of pollutant $_p$

BP_{Hi} = the breakpoint that is greater than or equal to C_p

BP_{Lo} = the breakpoint that is less than or equal to C_p

I_{Hi} = the PSI value corresponding to BP_{Hi}

I_{lo} = the PSI value corresponding to BP_{Lo}.

If the concentration is larger than the highest breakpoint in Table 2 then you may use the last two breakpoints in Table 2 when you apply Equation 1. If your O_3 values (1-hour and 8-hour) are in the overlapping category (very unhealthy, see footnote 4 to Table 2) then you must use Equation 1 for both values and use the larger index value for O_3.

14. How Do I Use Table 2 and Equation 1 To Calculate the PSI?

If you observe a 1-hour O_3 value of 0.156 ppm, an 8-hour O_3 value of 0.130 ppm, and a PM_{10} value of 210 μg/m³, then do this:

a. Find the breakpoints for PM_{10} at 210 μg/m³ as 205 μg/m³ and 354 μg/m³ corresponding to index values 151 and 200;

b. Find the breakpoints for 1-hour O_3 at 0.156 ppm as 0.155 ppm and 0.404 ppm corresponding to index values 201 and 300;

c. Find the breakpoints for 8-hour O_3 at 0.130 ppm as 0.125 ppm and 0.374 ppm corresponding to index values 201 and 300;

d. Apply Equation 1 for 210 μg/m³, PM_{10}:

$$\frac{200-151}{354-205}(210-205)+151=153.$$

e. Apply Equation 1 for 0.156 ppm, 1-hour O_3:

$$\frac{300-201}{.404-.155}(.156-.155)+201=201$$

f. Apply Equation 1 for 0.130 ppm, 8-hour O_3:

$$\frac{300-201}{.374-.125}(.130-.125)+201=203$$

g. Find the maximum, 203. This is the PSI.

Background and Reference Materials

15. What Additional Information Should I Know?

The EPA has developed a computer program to calculate the PSI for you. The program works with Windows 95, it prompts for inputs, and it displays all the pertinent information for the PSI (the index, color, category, health effects, and cautionary language). You can download the program at www.epa.gov/airnow. The EPA also publishes a brochure on the PSI that explains the index in detail (EPA 1999b), guidance that provides associated health effects and cautionary statements (EPA 1998), and guidance that explains the steps necessary to start an air pollution forecasting program (EPA 1999a).

16. References

EPA, (1998) Guideline for Public Reporting of Daily Air Quality-Pollutant Standards Index (PSI), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC, 27711, draft document.

EPA, (1999a) Guideline for Starting an Air Pollution Forecasting Program, U.S. Environmental Protection Agency, Office of

Air Quality Planning and Standards, Research Triangle Park, NC, 27711, in preparation.

EPA, (1999b) Measuring Air Quality: The Pollutant Standards Index, Printing Management Office, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, in preparation.

[FR Doc. 98–32571 Filed 12–8–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 152 and 156

[OPP–250127; FRL–6042–8]

Antimicrobial Pesticide Products; Other Pesticide Regulatory Changes; Notification to the Secretaries of Agriculture and Health and Human Services

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice to the Secretaries of Agriculture and Health and Human Services.

SUMMARY: Notice is given that the Administrator of EPA has forwarded to the Secretaries of Agriculture and Health and Human Services a proposed rule under sections 3 and 25(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The proposed rule would establish procedures for streamlining the pesticide antimicrobial program and make other changes to current pesticide regulatory and labeling provisions. This notification is required by FIFRA sections 21(a) and 25(a).

FOR FURTHER INFORMATION CONTACT: By mail: Jean M. Frane, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 1116C, Crystal Mall #2, Arlington, VA, 703–305–5944, e-mail: frane.jean@.epa.gov.

SUPPLEMENTARY INFORMATION: Sections 21(a) and 25(a) of FIFRA provide that the Administrator shall provide the Secretaries of Agriculture and Health and Human Services with a copy of any proposed regulation at least 60 days before signing it for publication in the **Federal Register**. If the Secretary comments in writing regarding the proposed regulation 30 days after receiving it, the Administrator shall issue for publication in the **Federal Register**, with the proposed regulation, the comments of the Secretary, if requested by the Secretary, and the response of the Administrator concerning the Secretary's comments. If the Secretary does not comment in writing within 30 days after receiving the proposed regulation, the Administrator may sign the proposed regulation for publication in the **Federal Register** anytime thereafter. As required by FIFRA section 25(a)(3), a copy of the proposed regulation has been forwarded to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

List of Subjects in Parts 152 and 156

Environmental protection, Administrative practice and procedure, Labeling, Occupational safety and health, Pesticides and pests, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 136s, 136w *et seq.*

Dated: December 2, 1998.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 98–32681 Filed 12–8–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6198–8]

Hazardous Waste Management Program: Final Authorization of State Hazardous Waste Management Program for Oklahoma

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve Oklahoma Department of Environment Quality's (ODEQ) RCRA Cluster VI Hazardous Waste Program under the Resource Conservation and Recovery Act (RCRA). The RCRA Cluster VI rules are listed in the rules section of this **Federal Register** (FR). The EPA is approving the State's request as an immediate final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the immediate final rule. If no adverse written comments are received in response to this action no further activity is contemplated in relation to this proposed rule. If EPA receives adverse written comments, EPA will withdraw the immediate final rule before its effective date by publishing a notice of withdrawal in the **Federal Register**. The EPA will then respond to public comments in a later final rule based on this proposal. The EPA may not provide further opportunity for comment. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before January 8, 1999.

ADDRESSES: Written comments referring to Docket Number OK98–2 may be mailed to Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD-G), Multimedia Planning and Permitting Division, at the address listed below. Copies of the materials submitted by ODEQ may be examined during normal business hours at the following locations: EPA Region 6 Library, 12th Floor, Wells Fargo Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202–2733, Phone number: (214) 665–6444. Oklahoma Department of Environmental Quality, 1000 Northeast Tenth Street, Oklahoma City, Oklahoma, 73117–1212, Phone number: (405) 271–5338.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, (214) 665–8533.

SUPPLEMENTARY INFORMATION:

For additional information see the immediate final rule published in the rules section of this **Federal Register**.

Jerry Clifford,

Deputy Regional Administrator, Region 6.

[FR Doc. 98–32576 Filed 12–8–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 39

RIN 1004–AC87

Wild and Scenic Rivers

AGENCY: Offie of the Secretary, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of the Secretary publishes this proposed rule in response to comments received on a proposed rule published by the Bureau of Land Management (BLM), and to improve Departmental consistency among Wild and Scenic River-administering agencies. Consistent with President Clinton's Government-wide regulatory reform initiative, this proposed rule is written in a straightforward ''Plain English'' style. This rule would establish uniform standards and procedures by which the Department of the Interior, through its agencies which administer rivers in the National Wild and Scenic Rivers System (Bureau of Land Management, U.S. Fish and

Wildlife Service and National Park Service), will consider Federal licensing of, or assistance to, water resources projects affecting designated wild and Scenic Rivers or congressionally authorized Study Rivers.

This proposed rule also withdraws the proposed rulemaking published in the **Federal Register** by the BLM on September 10, 1996 (61 FR 47726). This proposed rule would harmonize Interior's procedures and standards with those of the U.S. Forest Service in order to streamline and improve the administration of the National Wild and Scenic Rivers System.

DATES: Submit comments on or before February 8, 1999. The Department of the Interior may not consider comments received or postmarked after this date in preparing the final rule.

ADDRESSES: Mail comments to John Haubert, Room 3230, 1849 C Street, NW, Washington, DC 20240. Commenters may transmit comments electronically via the Internet to: John__Haubert@nps.gov [For Internet, please include ''Attn: Proposed DOI Wild and Scenic Rivers Rulemaking,'' your name and address in your message.]

FOR FURTHER INFORMATION CONTACT: John Haubert, NPS, 202–208–4290. E-mail: john__haubert@nps.gov

For a complete listing of designated Wild and Scenic Rivers, visit the DOI website at: http;//www.nps.gov/rivers.

SUPPLEMENTARY INFORMATION:

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

I. Public Comment Procedures

Written comments on the proposed rule should focus on issues pertinent to the proposed rule, and explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal being addressed. The Secretary may not necessarily consider or include in the Administrative Record for the final rule comments received after the close of the comment period (see **DATES**) or delivered to an address other than the one listed above (see **ADDRESSES**).

II. Discussion of Proposed Rule

This proposed rule is a ''follow-up'' to the Proposed Rulemaking that the BLM published in the September 10, 1996, **Federal Register** (61 FR 47726). That publication notified the public of a similar rulemaking process (applicable only to BLM-administered rivers), and invited public comments for 30 days, ending on October 10, 1996. In response to several requests, BLM reopened the comment period in the November 4, 1996, **Federal Register** (61 FR 56651), for an additional 30 days, ending on December 4, 1996. Many respondents suggested that a single rule be adopted by the four Federal Wild and Scenic River administering and/or managing agencies (U.S. Forest Service, BLM, U.S. Fish and Wildlife Service, and National Park Service). This proposed rule responds to that and other comments received by the BLM in its earlier proposed rule. The proposed rule applies only to Department of the Interior agencies and does not apply to the Forest Service, which is an agency of the Department of Agriculture.

The Secretary of the Interior proposes to issue this rule under the authority of Section 7 of the Wild and Scenic Rivers Act, as amended (16 U.S.C 1278). Section 7(a) provides as follows:

> The Federal Energy Regulatory Commission shall not license the construction of any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the Federal Power Act (41 Stat. 1063), as amended (16 U.S.C. 791a et seq.), on or directly affecting any river which is designated in section 1274 of this title as a component of the national wild and scenic rivers system or which is hereafter designated for inclusion in that system, and no department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration. Nothing contained in the foregoing sentence, however, shall preclude licensing of, or assistance to, developments below or above a wild, scenic or recreational river area or on any stream tributary thereto which will not invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area on the date of designation of a river as a component of the National Wild and Scenic Rivers System. No department or agency of the United States shall recommend authorization of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration, or request appropriations to begin construction of any such project, whether heretofore or hereafter authorized, without advising the Secretary of the Interior or the Secretary of Agriculture, as the case may be, in writing of its intention to do so at least sixty days in advance, and without specifically reporting to the Congress in writing at the time it makes its recommendation or request in what respect construction of such project would be in conflict with the purposes of this chapter and would affect the component and the values to be protected by it under this chapter.

Section 7(b), which applies to congressionally authorized study rivers, contains identical language except for the deletion of the word ''unreasonably'' before the word ''diminish'' in the second sentence.

The Wild and Scenic Rivers Act directs Federal agencies to protect the free-flowing condition and other values of designated rivers and congressionally authorized study rivers from the adverse effects of water resources projects. The proposed rule defines ''water resource project'' as any construction activity or project that would affect the free-flowing characteristics of a river. The term ''free-flowing'' is defined in the Act and means 'existing or flowing in natural condition without impoundment, diversion, straightening, rip-rapping, or other modification of the waterway.' Thus, a ''water resources project'' is defined in this proposed rule as any construction or project within the bed or banks of a river which would modify the waterway and therefore affect the free-flowing characteristics of the river.

Section 7 of the Wild and Scenic Rivers Act (16 U.S.C. 1278), as amended, requires river administering agencies to review proposed authorization or federal assistance to water resources projects on or affecting any designated Wild and Scenic River or on any river congressionally authorized for study for possible inclusion in the Wild and Scenic Rivers System under Section 5(a) of the Act. This proposed rule provides procedures and standards for Department of the Interior river administering agencies to ensure compliance with the requirements of Section 7 of the Wild and Scenic Rivers Act for water resources projects.

The proposed rule sets forth applicable procedures that the Secretary of the Interior, through the applicable Wild and Scenic river administering agencies, i.e., BLM, U.S. Fish and Wildlife Service (FWS), and National Park Service (NPS), would use for conducting analyses under Section 7 of the Wild and Scenic Rivers Act for proposed for proposed water resources projects to determine whether there would be an adverse effect on the designated Wild and Scenic River or congressionally authorized Study River. These regulations are consistent with those of the Forest Service, U.S. Department of Agriculture, at 36 CFR part 297.

III. Procedural Matters

National Environmental Policy Act of 1969

The Department of the Interior has prepared an environmental assessment (EA), in accordance with Section

102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4331(2)(C)). The Department of the Interior anticipates making a Finding of No Significant Impact (FONSI) for the final rule in accordance with the Department's procedures for implementing NEPA. The EA is on file in the Administrative Record at the address previously specified.

Paperwork Reduction Act

The proposed rule does not contain information collection requirements that the Office of Management and Budget must approve under 44 U.S.C. 3501 et seq.

The Regulatory Flexibility Act

The Department of the Interior has determined that the proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The scope of the proposed rule is limited to those Federal departments or agencies charged with reviewing the proposed authorization of, or Federal assistance to, water resources projects affecting designated Wild and Scenic Rivers or congressional authorized Study Rivers. Therefore, no small entities are affected by the proposed rule.

Unfunded Mandates Reform Act of 1995

The Interior Department's operating procedures in 43 FR 39 will not result in any unfunded mandate to State, local, or tribal governments, or to the private sector, of $100 million or more in any one year.

Executive Order 12612

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

Executive Order 12630

This proposed rule does not represent a government action capable of interference with constitutionally protected property rights. Since the primary functions of the rule is to establish uniform Department operating procedures regarding authorization of, or Federal assistance to, water resources projects affecting designated Wild and Scenic Rivers or congressionally authorized Study Rivers, there will be no private property rights impaired as a result. Therefore, the Department of the Interior has determined that the proposed rule would not cause a taking of private property, or require further discussion of takings implications under this Executive Order.

Executive Order 12866

According to the criteria listed in section 3(f) of Executive Order 12866, the Department of the Interior has determined that this proposed rule is a significant regulatory action.

Authors

The principal authors of this rule are Gary G. Marsh and Frances Watson, Bureau of Land Management, John Haubert, National Park Service, and Craig Czarnecki, U.S. Fish and Wildlife Service.

List of Subjects in 43 CFR Part 39

Wild and scenic rivers.

Dated: September 29, 1998.

Bruce Babbitt,

Secretary of the Interior.

For the reason discussed in the preamble and under the authority of the Wild and Scenic Rivers Act (16 U.S.C. 1278), the Department of the Interior proposes to amend title 43 of the Code of Federal Regulations, as set forth below:

1. A new part 39 is added to Subtitle A to read as follows:

PART 39—WILD AND SCENIC RIVERS

Subpart A—Water Resources Projects

Sec.
39.1 What is the purpose of part 39?
39.2 How are key terms in this part defined?
39.3 What procedures must a Federal department or agency follow to receive consideration from the applicable Wild and Scenic River administering agency before providing Federal assistance, to or authorization of, a water resources project?
39.4 Under what conditions will the applicable Wild and Scenic River administering agency consent to Federal assistance to, or authorization of, a water resources project?
39.5 What is the estimated time for the applicable Wild and Scenic River administering agency to review a proposal to provide Federal assistance to, or authorization of, a water resources project?

Subpart B—[Reserved]

Authority: 16 U.S.C. 791a; 16 U.S.C. 1271–1287; 33 U.S.C. 401 et seq.; 33 U.S.C. 1344.

Subpart A—Water Resources Projects

§ 39.1 What is the purpose of this part?

This part specifies the Department of the Interior (DOI) policies and procedures for conducting analyses under Section 7 of the Wild and Scenic Rivers Act for proposed water resources projects affecting Wild and Scenic Rivers or congressionally authorized Study Rivers that the DOI administers.

§ 39.2 How are key terms in this part defined?

As used in this part:

Act means the Wild and Scenic Rivers Act (82 Stat. 906, as amended; 16 U.S.C. 1271–1287.

Applicable Wild and Scenic River administering agency means an agency of the DOI responsible for managing designated Wild and Scenic Rivers or congressionally authorized Study Rivers (i.e., Bureau of Land Management, National Park Service, and U.S. Fish and Wildlife Service).

Construction means any action carried on with Federal assistance affecting the free-flowing characteristics or the scenic or natural values of a Wild and Scenic River or Study River.

Federal assistance means any assistance associated with a water resources project provided by any Federal department or agency. Such assistance may include, but is not limited to, a license, permit, or authorization granted by the Federal Energy Regulatory Commission (FERC) under Sections 4(e) and (f) of the Federal Power Act (16 U.S.C. 797); a license, permit or other authorization granted by the Corps of Engineers, Department of the Army, under the Rivers and Harbors Act of 1899 (33 U.S.C 401 et seq.) and Section 404 of the Clean Water Act (33 U.S.C. 1344); or any other license, permit, grant, or loan provided, or other authorization required by a Federal department or agency.

Free-flowing means ''existing or flowing in a natural condition without impoundment, diversion, straightening, riprapping, or other modification of the waterway'' (16 U.S.C. 1286(b)).

Study River means a river and the adjacent area within one quarter mile on each side of the river from the ordinary high water mark (unless otherwise provided for by law) which is designated for study as a potential addition to the National Wild and Scenic Rivers System pursuant to Section 5(a) of the Act.

Study period means the time required to complete a study authorized by Section 5(a) of the Wild and Scenic Rivers Act. The study period lasts for 3 years after the President sends a report with his recommendations to the Congress.

Water resources project means any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the Federal Power

Act of 1995, as amended (41 Stat. 1063; 16 U.S.C 791a); or any project or construction activity that would affect free-flowing characteristics, as that term is defined in the Act, of a designated Wild and Scenic River or congressionally authorized Study River. Any project or construction located within the bed or banks of a designated Wild and Scenic River or congressionally authorized Study River, or located below, above, or on any stream tributary thereto is a water resources project. Examples of water resources projects include, but are not limited to, fisheries habitat and watershed restoration/enhancement projects: water diversion projects; transmission lines; bridge and other roadway construction/reconstruction projects; dams; water conduits; bank stabilization projects; channelization projects; powerhouses; levee construction; reservoirs; recreation facilities, such as boat ramps or fishing piers; or dredge and fill activity that requires a Federal permit, such as from the U.S. Army Corps of Engineers as required by Section 404 of the Clean Water Act (33 U.S.C. 1344).

Wild and Scenic River means a river designated as a component of the National Wild and Scenic Rivers System pursuant to section 3(a) and 2(a)(ii) of the Act.

§ 39.3 What procedures must a Federal department or agency follow to receive consideration from the applicable Wild and Scenic River administering agency before providing Federal assistance to, or authorization of, a water resources project?

(a) *Notice.* (1) As soon as practicable, but not less than 60 days before the date of the proposed Federal assistance, the Federal agency must provide a written notice of the agency's intent to construct, authorize or provide Federal assistance to a water resources project located on or affecting any portion of a DOI administered Wild and Scenic River or congressionally authorized Study River, or located below, above, or on any stream tributary thereto.

(2) Notice must be sent to the designated official of the applicable Wild and Scenic River administering agency, or his or her designee, as follows:

(i) BLM administered rivers: State Director, BLM, or his/her designee; or

(ii) NPS administered rivers: Director, NPS or his/her designee; or

(iii) FWS administered rivers: Director, FWS or his/her designee.

(b) *Contents of Notice.* The Federal agency must include the following information in the notice to facilitate the Section 7 determination of effects:

(1) Name and location of the affected designated River or Study River;

(2) Location of the project or construction;

(3) Nature of the permit, assistance, or other authorization proposed to be issued;

(4) Description of the proposed activity or construction; and

(5) Any relevant information, such as plans, maps, environmental studies, assessments, or environmental impact statements, alternatives, and mitigating measures.

§ 39.4 Under what conditions will the applicable Wild and Scenic River administering agency consent to Federal assistance to, or authorization of, a water resources project?

(a) The applicable Wild and Scenic River administering agency will consent to Federal assistance to, or authorization of, a water resources project if it determines based on the applicable standard below:

(1) The water resource project will not have a direct and adverse effect on the values for which a Wild and Scenic River was designated or Study River authorized by Congress, when any portion of the project or construction is within the boundaries of such river;

(2) The effects of the water resources project will neither invade nor unreasonably diminish the scenic, recreational, and fish and wildlife values of a designated Wild and Scenic River, when any portion of the project or construction is located below, above, or on any stream tributary thereto.

(3) The effects of the water resources project will neither invade not diminish the scenic, recreational, and fish and wildlife values of a congressionally authorized Study River when the project or construction is located below, above, or on any stream tributary thereto during the study period.

(b) If the project or construction would impermissibly affect wild and scenic river values, as described above, the designated official of the applicable Wild and Scenic River administering agency will advise the assisting or authorizing agencies the water resources project may not proceed as proposed. The applicable Wild and Scenic River administering agency may recommend measures to eliminate adverse effects, and the assisting or authorizing agencies may submit revised plans for consideration.

§ 39.5 What is the estimated time that the applicable Wild and Scenic River administering agency will take to review a proposal to provide Federal assistance to, or authorization of, a water resources project?

The designated official of applicable Wild and Scenic River administering agency, or designee, will attempt to make a determination for the proposed water resources project within 60 calendar days of receiving a Federal agency's notice. However, the designated official is authorized to make the determination sooner or later than 60 days depending on the simplicity or complexity of the project or construction being analyzed. Further, the designated official, to the extent possible, will expedite consideration of a notice for a project or construction needed to address any emergency.

Subpart B—[Reserved]

PART 8350—[REMOVED]

2. Remove 43 CFR part 8350.

[FR Doc. 98–32581 Filed 12–8–98; 8:45 am]

BILLING CODE 4310–55–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 36 and 54

[CC Docket No. 96–45; FCC 98J–7]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission

ACTION: Proposed rule; recommended decision.

SUMMARY: On November 24, 1998, the Federal-State Joint Board adopted a Second Recommended Decision regarding universal service. In this decision, the Joint Board made numerous recommendations on universal service issues. The Joint Board recommends a federal high cost support mechanism for non-rural carriers that enables rates to remain affordable; that the Commission replace the 25/75 jurisdictional division of responsibility for high cost support; that the Commission compute federal high cost support for non-rural carriers through a two-step process; and that the mechanisms outlined be reviewed no later than three years from July 1, 1999. The Commission seeks comment on the Second Recommended Decision.

DATES: Comments should be filed on or before December 23, 1998 and Reply

Comments on or before January 13, 1999.

ADDRESSES: All filings should reference: Comments on Joint Board *Second Recommended Decision*, CC Docket No. 96–45, and should include DA 98–2410. Interested parties must file an original and six copies of their comments with the Office of Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., Room TW–A325, Washington, D.C. 20554. Parties should send one copy of their comments to the Commission's copy contractor, International Transcription Service, 1231 20th Street, N.W., Washington, D.C. 20036. Copies of documents filed with the Commission, including the *Second Recommended Decision*, may be obtained from the International Transcription Service, 1231 20th Street, N.W., Washington, D.C. 20036, (202) 857–3800. Documents are also available for review and copying at the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554, from 9:00 a.m. to 4:30 p.m.

Parties may also file comments electronically via the Internet at: <http://www.fcc.gov/e-file/ecfs.html>. Only one copy of an electronic submission must be submitted. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the lead docket number for this proceeding, which is CC Docket No. 96–45. Parties not submitting their comments via the Internet are also asked to submit their comments on diskette. Parties submitting diskettes should submit them to Sheryl Todd, Common Carrier Bureau, Federal Communications Commission, 2100 M. St, N.W., 8th Floor, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labelled with the party's name, proceeding (including the lead docket number in this case, Docket No. 96–45, type of pleading—comment or reply comment), date of submission, and the name of the electronic file on the diskette. Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, parties must send copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Chuck Keller, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400, TTY (202) 418–0484, or via e-mail: <ckeller@fcc.gov>.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document released on November 24, 1998. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554.

Summary of Second Recommended Decision

I. Introduction

1. The Telecommunications Act of 1996 (''1996 Act'') explicitly recognized the need for federal and state support to ''preserve and advance universal service.'' In the 1996 Act, legislators recognized that existing support mechanisms could be threatened as effective competition materializes. Congress also made clear in the 1996 Act that federal and state regulators together must ensure that universal service is preserved and advanced as we move from a monopoly to a competitive market. Although never quantified or targeted in traditional rate designs, these mechanisms have included support flowing from urban to rural consumers implicit in rate averaging, and from interstate and intrastate access charges.

2. The Act requires that rates be ''just, reasonable and affordable,'' and that rates in rural, insular and high cost areas be ''reasonably comparable'' to rates charged for similar services in urban areas. The Act also requires ''specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.'' Goals of reforming universal service include: (1) revising support mechanisms that do not currently meet new statutory mandates, such as the need for nationwide reasonably comparable rates; (2) ensuring that support mechanisms are not eroded as local competition develops; and (3) establishing universal service support mechanisms that are part of a new regulatory structure consistent with Congress's pro-competitive goals.

3. The Joint Board and the Federal Communications Commission (''Commission'') determined previously that rates generally are affordable. While keeping in mind the need to ensure continued affordability, we focus to a greater degree in this *Second Recommended Decision* on the issue of reasonable comparability, and how to ensure the sufficiency of federal support to assure both of those important public interest goals. As effective competition develops for high-volume, urban customers, one consequence may be erosion of the implicit support system that protects consumers in rural, insular and high cost areas from unaffordable rates. The Joint Board recommends a federal high cost support mechanism for non-rural carriers that enables rates to remain affordable and reasonably comparable, even as competition develops, but that is no larger than necessary to satisfy that statutory mandate. The Joint Board believes that sizing the fund correctly is essential to ensuring that all consumers across the country benefit from universal service. The transition to a competitive environment requires us to be mindful of two competing goals: (1) supporting high cost areas so that consumers there have affordable and reasonably comparable rates; and (2) maintaining a support system that does not, by its sheer size, over-burden consumers across the nation.

4. As an initial matter, we note and support the Commission's ''hold harmless'' commitment not to reduce the current levels of explicit high cost support to states. In this *Second Recommended Decision*, consistent with that commitment, we outline an initial methodology for directing sufficient federal support to non-rural carriers to offset high intrastate costs in states with insufficient internal resources to ensure affordable and reasonably comparable rates. We recognize that further changes may be necessary as competition develops to change certain amounts of current implicit support into explicit support. We recommend that the Commission replace the 25/75 jurisdictional division of responsibility for high cost universal service support, adopted in the *Universal Service Order*, 62 FR 32862 (June 17, 1997), with the methodology for non-rural carriers outlined herein. Under this approach, the federal mechanism should instead provide the necessary support set by the methodology that we outline today.

5. We recommend that the Commission compute federal high cost support for non-rural carriers through a two-step process. First, the Commission should develop a total support amount necessary to reflect those areas considered to have high costs relative to other areas. Second, for areas that have high costs relative to other areas, the Commission should consider, in a consistent manner across all states, any particular state's ability to support high cost areas within the state. Federal support should be provided to the extent that the state would be unable to support its high cost areas through its own reasonable efforts. We also make

recommendations about the information that consumers should receive from carriers in connection with the recovery of universal service contributions. We recommend as well that the mechanisms outlined here be reviewed no later than three years from July 1, 1999. While we recommend a shared federal-state responsibility, we also conclude that, consistent with the statute, no state can or should be required by the Commission to establish an intrastate universal service fund.

6. The Act acknowledges and maintains the complementary roles that state and federal authorities have played in preserving and advancing universal service. Historically, both state and federal regulators have exercised their jurisdictional authority to ensure the availability of universal service. The ongoing cooperation throughout this proceeding between the federal and state staff and members of the Joint Board is a further example of the vitality of the federal-state partnership for ensuring universal service, and this referral proceeding represents the latest chapter in that cooperation. We look forward to continued collaboration with the Commission as universal service reform proceeds. In addition, we note that this proceeding involves the balancing of many difficult, competing interests. In resolving these issues in light of our guidance, therefore, the Commission has the difficult task of selecting a national solution that balances these competing interests.

7. This *Second Recommended Decision* is designed to take into account this dual federal and state responsibility in a manner that effectuates the principles and requirements of § 254. The federal mechanism should provide support in a manner that is designed to ensure that state universal service needs are fully met, consistent with the states' role with respect to universal service. We believe that this *Second Recommended Decision* establishes a framework for accomplishing that difficult mission.

II. The Purpose of Support

8. In mandating the reform of universal service support mechanisms, Congress clearly envisioned that the reform process would be conducted as a joint federal and state effort. The creation of this Joint Board is perhaps the plainest expression of this vision. Other provisions of § 254 reflect this shared responsibility. A primary aspect of the Joint Board's task in reforming universal service mechanisms is to ensure that consumers in high cost areas have access to telecommunications and information services that are affordable and reasonably comparable to those in urban areas, at rates reasonably comparable to those in urban areas. We believe that the demarcation of the respective responsibilities of state and federal regulators can be found in the mandate to ensure reasonably comparable rates. Regulators in the two jurisdictions have different tools available to them to meet universal service challenges. Issues of affordability and reasonable comparability can be dealt with through a combination of approaches, including: (1) through the rate design issues of a single local carrier, (2) through mechanisms that affect the rates of all carriers within a state, and (3) through mechanisms that affect rates across state lines. State commissions and the Commission each can use the first two tools with respect to rates in their respective jurisdictions. Only the Commission is able to employ the last. Our recommendations reflect both the availability of, and the relationship among, these approaches.

9. While the Act does not define reasonable comparability, we interpret that term to refer to a fair range of urban and rural rates both within a state's borders, and among states nationwide. We note that existing federal high cost loop support provides additional federal support to areas that have particularly high costs, and our recommendations herein continue that policy. It is proper to begin an inquiry by focusing on universal service issues closest to the consumer. Present rates are sufficient to cover the costs of serving most consumers across the nation. The costs of serving other consumers, however, are in excess of rates. To address these concerns, support mechanisms have been set up to offset these higher costs.

The Joint Board acknowledges that, absent reform to these mechanisms, the forces of competition could erode certain of these support mechanisms and potentially have a negative impact on the provision of universal service.

10. The first step in dealing with this potential impact concerns the rates currently being charged to consumers, and the ability of the state to respond to competitive entry through its own ratemaking methods. This responsibility falls within the state's jurisdiction. To the extent the Commission determines that the totality of reasonable state efforts would not be sufficient to address universal service funding without violating the principles of reasonable comparability and affordability, the federal universal support mechanism should complete the effort. With this framework in mind, then, the Joint Board will set forth the method it recommends that the Commission use to size, calculate, and distribute federal support among the nation's non-rural carriers.

11. In formulating this *Second Recommended Decision*, our goal has been to ensure that rates in rural and high cost areas served by non-rural carriers are affordable and reasonably comparable through specific, predictable, and sufficient support mechanisms that are, to the extent possible, explicit. To do this, commenters proposed three possible ways in which universal service support could be used: (1) To provide support for high cost areas to enable the comparability of rates; (2) to make existing interstate support explicit; and (3) to make existing intrastate support explicit. In this section, we will address each of these three possible uses of support.

A. Enabling ''Reasonably Comparable'' Rates

12. The Act requires that consumers have access to rates and services ''in rural, insular and high cost areas'' that are ''reasonably comparable'' to rates and services in urban areas. While the Act does not define reasonable comparability, we interpret that term to refer to a fair range of urban/rural rates both within a state's borders, and among states nationwide. We note that existing federal high cost loop support provides additional federal support to areas that have particularly high costs, and we propose to continue that policy as we move to a forward-looking cost methodology for determining high cost support.

13. We recommend that federal support be available to non-rural carriers serving consumers in areas with costs significantly above the national average and whose average costs throughout its study area significantly exceed the national average. This support should be available where, considered in a consistent manner across all states, a state would find it particularly difficult to achieve reasonably comparable rates, absent such federal support. To the extent that additional federal high cost support to non-rural carriers, beyond the amount currently provided, is necessary to help meet the statutory goal of reasonably comparable rates, that additional federal support should be used to help ensure that intrastate rates are able to satisfy this statutory goal. The state commission has the authority to indicate which intrastate rates shall be affected to help ensure that the carrier does not double recover. Because rate setting methods and goals may vary

across jurisdictions, we recommend, for purposes of determining federal high cost support, that the Commission use the *cost* of providing all supported services, rather than local rates. These costs are used in the methodology we describe below to calculate the level of federal support that will be available to help achieve reasonable comparability in rates across all states.

B. Making Interstate Support Explicit

14. In the *Universal Service Order* and the *Access Reform Order*, the Commission made several changes to its access charge rules, with the goal of reforming the mechanisms for recovery of subscriber loop costs to move from implicit to explicit federal universal service support mechanisms. In summary, the Commission decided that: (1) Long term support (LTS) should be removed from interstate access charges and made part of explicit federal support mechanisms; and (2) incumbent LECs should use any universal service support from the new support mechanisms to reduce support implicit in access charges, pending further reform.

15. The Commission concluded that universal service support implicit in rates cannot be sustained if competition emerges in the marketplace, and that removing implicit universal service support from interstate rates and replacing such support either with improved revenue recovery mechanisms or with explicit support should remain a goal of federal telecommunications reform. The Commission also found that, unless implicit support is identified and eventually stripped from interstate access charges, those access charges could remain artificially high.

16. The Commission's efforts to remove implicit universal service support from interstate access charges will not affect intrastate rates directly. This issue is intertwined with the Commission's ongoing access reform proceeding, and the Commission should continue to synchronize the access reform and universal service proceedings with any action it takes to remove implicit universal service support from interstate access charges.

17. If the Commission determines that there is implicit universal service high cost support currently in interstate access rates, it is within the Commission's jurisdiction to determine what that implicit support is and what action the Commission should take to make that support explicit. Although we make no recommendation regarding whether the Commission should eliminate implicit support from interstate access rates, we recognize that it has the authority to do so. We do recommend, however, that, to the extent that the Commission determines that implicit support needs to be removed from interstate access charges and replaced with explicit universal service support, interstate access rates, such as the carrier common line charge (CCLC), presubscribed interexchange carrier charge (PICC), or subscriber line charge (SLC), be reduced dollar for dollar to reflect the corresponding explicit support. We further recommend that the Commission seek to ensure that any reductions in interstate access rates inure to the benefit of consumers. When considering such recommendations, the Commission should give due regard to the requirement that universal service shall bear no more than a reasonable share of joint and common costs. Moreover, the Commission should ensure that any efforts to replace implicit support in interstate access charges with explicit support do not jeopardize the reasonable comparability standard, or harm consumers generally, or any class of consumers in particular. Before taking any final action on removing this support from interstate access charges, the Commission should first consult with the Joint Board.

C. Making Intrastate Support Explicit

18. The Act requires that the Joint Board recommend changes to the Commission's rules that may be necessary to implement §§ 214(e) and 254, ''including the definition of the services that are supported by Federal universal service support mechanisms.'' Section 254(b)(5) provides that there should be ''specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.'' Thus, the Act envisions that both states and the federal government have authority and responsibility to ensure that universal service needs are met. The Act further allows the states in § 254(f) to create state universal service support mechanisms. The Act clearly envisions the role of the Joint Board to be that of advising the Commission on matters related to federal support mechanisms, and preserves the ability of each state to design intrastate support mechanisms, although these state support mechanisms may not be inconsistent with the federal rules or burden the federal support mechanism. In this *Second Recommended Decision*, we recommend a shared responsibility, but we also conclude, consistent with the statute, that the Commission may not mandate that a state establish an intrastate universal service fund.

19. Historically, intrastate rate design has helped promote universal service. While techniques such as rate averaging have served states well in the past, the onset of competition in local markets is likely to erode the ability of states to fund universal service through implicit support mechanisms. States possess the jurisdiction and responsibility to address these implicit support issues through appropriate rate design and other mechanisms within a state.

20. The same competitive forces that Congress anticipated would require making interstate universal service support explicit may militate for making intrastate universal service support explicit as well. The Act, however, did not mandate such an outcome. States should bear the responsibility for the design of intrastate funding mechanisms. The federal support mechanism should not be contingent upon, nor should it require, any particular action by the state.

III. Proposed Method for Ensuring Sufficient Support for Affordable and Reasonably Comparable Rates

A. Basing Federal High Cost Support on Forward-Looking Economic Costs

21. In the *Universal Service Order*, the Commission adopted the Joint Board's recommendation that the revised universal service support mechanism would determine non-rural carriers' high cost support based on forward-looking economic costs, instead of the incumbent carrier's book costs, of providing supported services in order to ''send the correct signals for entry, investment, and innovation in the long run.'' We continue to believe that federal high cost support should be based on forward-looking economic costs.

22. Without a complete forward-looking economic cost model, it is not possible for the Joint Board to make a final recommendation as to the most reasonable forward-looking methodology to be used in distributing federal high cost support to the states and/or carriers. We note, however, that the vast majority of proposals on the record in this proceeding would use a model to estimate the forward-looking cost of providing the supported services. No party has suggested that there is a method preferable to a model to determine support based on forward-looking costs. We recommend, therefore, that the Commission continue to work with the Joint Board to select the input values to complete a forward-looking cost model and to finalize the methodology for distributing federal high cost support. We do recommend a framework, discussed in more detail below, that relates federal support to

high average forward-looking costs and to states' ability to address their own universal service requirements.

23. Because the Commission's cost proxy model results are not complete, our recommendation on using a model to estimate forward-looking costs is a work in progress, and therefore tentative. We fully anticipate that the model results will furnish reasonable cost estimates for all regions of the country that can provide the basis for determining federal high cost support. Nevertheless, significant uncertainties need to be eliminated before a model can serve as the basis for federal support distributions. For example, a model must meet the openness criterion required of all model developers. At present the federal platform has been tested using geocoded customer location data that is treated as proprietary information by its supplier. We also understand that the Commission is seeking to identify alternative data sources at this time. We urge the Commission not to adopt those particular data as input values unless the Commission determines that such data are sufficiently open and available for testing and comment. Despite these uncertainties, we recommend that the states, the Commission, and the Joint Board continue their joint efforts to develop an accurate cost proxy model. In the event that the Commission has not defined all elements necessary to calculate support based on forward-looking costs in time for implementation by July 1, 1999, then the Joint Board recommends that the present method for determining support be continued for an interim period. In that event, we also recommend that the Commission make interim adjustments to the present rules to resolve any comparability issues in rural states primarily served by a large carrier, consistent with our general recommendation on comparability issues.

24. We emphasize, however, that, in recommending this framework for determining non-rural carriers' high cost support based on forward-looking cost, we do not intend for the Commission to create any precedent for any potential revisions to support mechanisms for rural carriers. The model platform that the Commission adopted in October was designed to estimate *non-rural carriers'* costs. Pursuant to the Joint Board's recommendation, the Commission has provided that the determination of the appropriate manner in which a model should be applied to rural carriers, if at all, will take into account the recommendation of this Joint Board, after the Joint Board receives a report from the Rural Task Force. The Joint Board intends to look closely at these issues to ensure that rural carriers' unique situations and challenges are addressed in the separate proceedings examining their high cost support mechanisms.

25. We further recommend that the Commission reconsider its decision to allow state cost studies to be used in place of the federal model for non-rural companies. We believe that it is more appropriate that the federal universal service support mechanisms be based upon a national yardstick for determining cost. Without such a national yardstick, it will be difficult to establish a consistent nationwide measurement of rate comparability. Although the Commission should fully evaluate any comments on this issue, we recommend that, absent a clear showing that basing federal support on a state cost study is necessary and appropriate to achieve statutory goals, the Commission base all federal support on a uniform methodology that derives from a single, national model. States may, of course, base any intrastate high cost support mechanisms on their own cost studies, rather than a federal model.

B. Size of Area Over Which Costs Are Averaged

26. In the *Universal Service Order,* the Commission adopted the Joint Board's recommendation that forward-looking economic costs be determined at the wire center level or below. While we acknowledge the value of a cost model that is capable of estimating costs at that level of granularity, we now recommend that federal support initially be determined by measuring costs at the study area scale, a scale considerably larger than the wire center. In general, a study area is an area served by a local exchange carrier in a single state. The existing high cost support program measures costs and distributes support at the study area level.

27. We recommend measuring costs at the study area level at this time because we believe that support calculated at this level will properly measure the support responsibility that ought to be borne by federal mechanisms given the current extent of local competition. We noted above that the primary purpose of federal support should be to ensure that rates remain affordable and reasonably comparable throughout the nation. By ensuring that cost disparities among study areas and among states are limited, we believe that federal support will be sufficient to maintain rate comparability and affordability.

28. We also recognize that, as competition develops within a study area, calculating costs using the aggregate characteristics of the study area may become less appropriate. Again, in light of the second goal of reforming universal service—ensuring that support mechanisms are not eroded as competition develops—we recommend that the Commission consider the possible impacts of competition on federal universal service support mechanisms.

29. We have considered the use of statewide average cost (as opposed to study area costs) to determine the need for universal service support. While we agree that the states can be expected to participate as full partners in preserving universal service, a statewide approach could require states to create mechanisms to transfer support among non-rural carriers. At present, however, some states may lack such a mechanism. Given the short time to implement the new mechanism, we find it prudent to average costs at the study area level.

C. State Responsibility for Reasonably Comparable Rates

30. In this section, we conclude that the law gives the Commission an important role in universal service, but that the federal role is not exclusive. The states also bear part of the shared responsibility for universal service. States are free under the Act to establish or refrain from establishing explicit universal service support mechanisms. As we noted above, furthermore, federal support may not be made contingent upon any actions taken, or not taken, by the states. Federal support should not rely on a state's actions with respect to universal service but depend only upon the total support amount generated by the methodology described herein for calculating the amount of federal support for each state. The Joint Board believes therefore, that the level of federal support should reflect, in a consistent manner, each state's ability to use its own resources to address its universal service needs, regardless of whether that or any other amount of support is explicitly provided by the state.

31. While there is no mandate that a state create such an explicit fund, the state should have in place ''specific, predictable and sufficient'' mechanisms to preserve and advance universal service. The federal support mechanism need not take into account the state's authority and ability actually to establish state universal service support mechanisms, since carriers may be required to recover more total support than the amount used exclusively for purposes of developing the federal fund. Such discretionary variations in support

at the state level are left intentionally independent of the standard determinations of federal support levels, precisely in order to allow states to set their own levels of corresponding affordability and funding requirements. In contrast, federal funding requirements should be those amounts necessary to establish a standard of reasonable comparability of rates across states. Any state is then able to supplement, as desired, any amount of federal funds it may receive under this standard.

32. While we recommend a shared responsibility, we also conclude that, consistent with the statute, no state can or should be required by the Commission to establish an intrastate universal service fund. Each state is uniquely qualified to determine, based upon its own costs, rates and other circumstances, when and if it needs an explicit universal service support mechanism.

33. Implicit support in state rates is a matter intimately related to each state's rate design. The success of these state efforts is demonstrated by the fact that rates today are generally affordable and subscribership is currently very high in most areas of the nation. This indicates a limited need for additional federal involvement. We believe it is consistent with the Act for the Commission to assume that the states will address issues regarding implicit intrastate support in a manner that is appropriate to local conditions. We also conclude that, under the Act, where states have the capacity today to accomplish this task, states are the most appropriate governmental level to address this issue.

34. Some states may face significant obstacles in maintaining reasonably comparable rates, and may find that solving this problem by state action alone is impossible or unreasonable in some instances. For this reason, we believe that additional federal support may be needed to ensure that rates are reasonably comparable, as required by § 254(b)(3).

D. Methodology for Federal Support of Reasonably Comparable Rates

35. We have considered numerous distribution options, including all those submitted by the parties. The methodology we propose incorporates elements from the various plans filed in this proceeding. Our methodology would average costs at a study area level. Our methodology incorporates a reasonable ''hold harmless'' component, and is grounded in the principle that additional federal high cost support should be targeted to areas with the greatest need. Our recommended methodology includes a cost-based benchmark. Finally, as advocated by a number of parties, our methodology takes into account each state's ability to support its universal service needs internally. The framework below addresses only the affordability and comparability goals of the Act. As indicated previously, we cannot at this time provide the details of a recommendation for a specific mechanism to distribute federal support to eligible carriers. We can, however, outline the basic elements that we believe should be considered in designing the distribution methodology.

36. We recommend that the distribution methodology contain two primary elements. First, study areas with average forward-looking per-line costs significantly in excess of the national average cost should be identified. Second, the state's ability to support its own universal service needs should be determined. Federal support should be provided only for costs that exceed both these thresholds.

37. In the first step of the process, identifying areas with high costs, we recommend that the Commission use the *cost* of providing supported services, rather than local rates, to evaluate rate comparability, because rate setting methods and goals may vary across jurisdictions. We recommend that federal support be available to non-rural carriers with average costs significantly above the national average. Specifically, we recommend that the Commission select a single national cost benchmark against which the forward-looking cost in a given study area would be compared to determine whether that study areas has costs that are significantly above the national average. We recommend that the Commission consider setting this national benchmark at a level somewhere between 115 and 150 percent of the national weighted average cost per line.

38. The second step in determining federal support should reflect that, for the reasons outlined above, federal support is only one portion of the shared federal-state responsibility established in § 254. Federal support should only be used to supplement a state's ability to address its own universal service needs. In order to accomplish this second step, it will be necessary to calculate a level of support that could equitably and reasonably be assumed to be provided by implicit or explicit state support. There are potentially several ways to estimate a state's ability to support its universal service needs. For example, the ratio of lines in a state with costs above a certain threshold could be determined, as a general indication of whether a state has a higher or lower percentage of high cost lines than other states. This ratio of high cost to low cost lines could then be factored into the support equation to reflect that states with a higher percentage of high cost lines will be less able to support their own universal service needs. Other approaches could set each state's presumed support responsibility at a given level, which might be expressed as a dollar value per line or as a percentage of intrastate revenue. The ratio of intrastate traffic volume to total traffic volume could also be used.

39. An example of how this system would work in practice would be an approach that calculated the state's ability to support its own universal service needs based on a percentage of intrastate revenues. Such a limit on a state's presumed responsibility, if adopted, could be between 3 and 6 percent of intrastate telecommunications revenues. Once the first step in the methodology has identified the amount by which costs in the study areas in the state exceed the cost benchmark, the percentage of intrastate revenues would be calculated that would be required to meet this high cost responsibility. If that amount exceeded the state revenue threshold, then the federal mechanism would provide support for the difference.

40. We urge the Commission to continue its deliberations with this Joint Board and to consult with Congress in order to specify further the proper parameters of these two variables as the study area costs are derived from the Commission's model and choice of inputs. It is our goal to recommend a plan that achieves the Act's goals of affordability and reasonable comparability without overburdening consumers across the nation.

IV. Size of the Federal Support Mechanism

41. We described above the general outlines of a method for calculating federal support to high cost areas. Finalization of that method will determine the overall size of federal support for reasonably comparable rates. So long as the fund is for the purposes established in the Act, the Commission has discretion in providing remedies that are designed to ''preserve and advance'' universal service. Nevertheless, for several reasons we conclude that the federal high cost support fund should be only as large as necessary, consistent with other requirements of the law. This will ensure that there is balance between consumers who directly receive the

benefits of universal service support and those consumers who must pay for the support through their rates.

42. Enabling reasonably comparable rates among states is a task that can likely be accomplished only with federal assistance. Federal support must be sufficient so that, when combined with a reasonable state effort, rates within service areas may be reasonably comparable both within and among states. Until we resolve several other pending policy decisions, as well as obtain more precise cost data, however, it is not possible to define, in dollars, the amount of support required by the comparability standard.

43. We do not believe, however, that current circumstances warrant a high cost support mechanism that results in a significantly larger federal support amount than exists today. We recognize that some states currently may not receive support sufficient to enable reasonably comparable rates, and thus we believe the support level may rise somewhat.

44. These principles can be implemented through a plan that, at least initially, calculates support on a study area basis and allocates a reasonable and equitable share of responsibility for support to state universal service efforts. The plan can enable reasonably comparable rates if the combination of state and federal support can keep the net cost differences (after receipt of universal service support) between high cost and low-cost areas within reasonable bounds. We recognize that competition may develop in unpredictable ways. As competition threatens rate comparability or affordability in high cost areas served by non-rural carriers, it may be necessary to re-evaluate the appropriate level of federal support. Incumbent LECs to date have not demonstrated that implicit support has eroded as a result of competition.

V. Hold Harmless

45. When a new federal support mechanism is implemented, some carriers could receive more or less support than in the past. If substantial reductions were to occur in a single year, some consumers could experience rate shock. Both significant, sudden increases in the fund size overall, and significant decreases in the support that goes to a particular carrier, could have a notable impact on consumers' rates.

46. Rural companies have been assured by the Commission that their support systems will not be altered until January 1, 2001, at the earliest, and in no event before the Joint Board has completed further deliberations on high cost support mechanisms for rural carriers, in light of the recommendations received from the Joint Board-appointed Rural Task Force. In addition, the Commission has stated to Congress that no state should receive less support than it currently receives. The Puerto Rico Telephone Company has asked, notwithstanding its non-rural status, to continue to receive support at present levels, until the transition to a forward-looking high cost support mechanism is implemented for rural companies.

47. We support the Commission's commitment to continue to hold states harmless, so that no non-rural carrier, including the Puerto Rico Telephone Company, will receive less federal high cost assistance than the amount it currently receives from explicit support mechanisms. We recommend, depending on the final amounts of support estimated on a forward-looking basis, that the Commission consider a gradual phase-in of any increase in federal universal service high cost support for non-rural carriers.

VI. Unserved Areas

48. The Arizona Corporation Commission (Arizona Commission) submitted a proposal to use a portion of federal support to address the problem of unserved areas and the inability of low-income residents to obtain telephone service because they cannot afford to pay the required line extension or construction charges. The Arizona Commission's proposal is not intended to be a comprehensive alternative to the high cost fund distribution model, but rather is intended to address a discrete concern related to low-income residents in remote areas.

49. The framework created in the Act was designed to accelerate deployment of services to all Americans, and the universal service program plays an important role in that framework. The issue raised by the Arizona Commission is of interest to the Joint Board, even though it was not among those specifically referred to the Joint Board for further recommendation. States have generally addressed the ''unserved household'' concern through intrastate proceedings that establish reasonable rates for line extension agreements and encourage carriers to minimize unserved regions of the state. We recognize that investments in line extensions have historically been an issue addressed by the states, and we believe they should continue to be dealt with by the states, to the extent that the states are able to do so. Unserved areas are not unique to Arizona; other states may also face this issue. Although historically a state issue, we recognize that there may be some circumstances which may warrant federal universal service support for line extensions to unserved areas. We recommend that the special needs of unserved areas be investigated and subject to a more comprehensive evaluation in a separate proceeding. The Commission should seek information on unserved areas throughout the nation and determine, in consultation with the Joint Board, whether such areas warrant any special federal universal service consideration.

VII. Mechanism for Distributing Support

A. Portability of Support

We recommend that the Commission continue with the policy established in the *Universal Service Order* of making high cost support available to all eligible telecommunications carriers, whether they be an incumbent LEC or a competitive carrier, including wireless carriers. We believe that portable support is consistent with the principle of competitive neutrality that we previously recommended and the Commission subsequently adopted in the *Universal Service Order.* We continue to support the use of competitive neutrality as a guiding principle of universal service reform and endorse the Commission's definition of this important principle in the *Universal Service Order.*

B. Use of Support

51. One issue raised in comments was whether the Commission should condition the receipt of federal high cost support to ensure that support is used in a manner consistent with § 254. We recommend that the Commission require carriers to certify that they will apply federal high cost universal service support in a manner consistent with § 254.

52. We recognize that some states may lack the authority or the desire to impose constraints or conditions on the use of federal high cost support. We do not recommend, therefore, that the Commission require that states provide any certification, or require any other state action, as a condition for carriers to receive high cost support. At the same time, parties may have a legitimate concern that federal support should be used by carriers to further the goals of § 254. We further recognize that, even if costs are calculated at the study area level, high cost support should be targeted to consumers living in the highest cost areas of the study area. We therefore recommend that the Commission permit, but not require,

states to certify that, in order to receive federal universal service high cost support, a carrier must use such funds in a manner consistent with § 254. For example, in order to provide efficient incentives for competitive entry, a state might require that federal support be targeted to those consumers living in the highest cost areas within a study area.

53. To the extent that the law permits, the Commission could reduce or eliminate federal high cost support if it finds that a carrier has not applied its federal universal service funds consistent with § 254, or if the state finds that the carrier has not adequately demonstrated that the federal support is being used in a manner consistent with § 254(e), which provides that carriers receiving universal service support ''shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.'' We also clarify that this decision is intended only to affect the amount that carriers receive from the federal universal service high cost support mechanism. We recommend that the Commission clarify procedures by which a party, including a state, may initiate action against a carrier that fails to apply federal universal service support in an appropriate manner.

54. We do not believe that conditioning support on a demonstration that funds are being used for the advancement of universal service places any restrictions on the determination of a carrier's status as an eligible telecommunications carrier. As the *Universal Service Order* notes, ''section 214(e)(2) does not permit the Commission or the states to adopt additional criteria for the designation as an eligible carrier.''

55. One proposal recommends that the Commission distribute universal service funding directly to state commissions rather than to carriers. We recognize that some state commissions may be able to ensure that high cost support is distributed to carriers and is used in a manner, consistent with federal rules, that best ensures that rates are just, reasonable, and affordable throughout that particular state. Nevertheless, we cannot recommend that the Commission adopt that mechanism, in light of the long-standing practice at the time that the 1996 Act became law of distributing federal universal service support to the carriers providing the supported services, and the absence of any affirmative evidence in the statute or legislative history that Congress intended such a fundamental shift to a state block grant distribution mechanism. In addition, distributing funding directly to state commissions is likely to create substantial administrative burdens for states currently lacking this ability, especially because there is very little time, prior to the July 1, 1999 implementation date, for the state to take the steps necessary to administer federal high cost support pursuant to the rules that Commission will be adopting in the spring.

VIII. Assessing Contributions from Carriers

56. In the *Universal Service Order,* the Commission determined that assessment of contributions for the interstate portion of the high cost and low-income support mechanisms shall be based solely on end-user interstate telecommunications revenues, and assessment of universal service support for eligible schools, libraries and rural health care providers shall be based on interstate and intrastate end-user telecommunications revenues. The Commission declined to assess both intrastate and interstate end-user revenues for the high cost and low-income support mechanisms because the states are currently reforming their own universal service programs, and it would have been premature to assess contributions on intrastate revenues before appropriate forward-looking mechanisms and revenue benchmarks are developed. The Commission also concluded that carriers shall be permitted to recover their contributions to universal service support mechanisms only through rates for interstate services.

57. Pending the decision of the Fifth Circuit, our recommendation on this issue is necessarily tentative. Continuing to assess contributions for high cost and low income support based solely on interstate revenues, as set forth in the *Universal Service Order,* could have certain benefits. Under this approach, state commissions would have the greatest flexibility to tap into their intrastate revenue bases to advance universal service at the state level. Assessing only interstate revenues for federal high cost support also has some significant disadvantages, however. For instance, many carriers that do not routinely have to separate intrastate and interstate revenues for regulatory or business purposes now must do so solely for federal universal service purposes. This creates additional burdens on these carriers, and may create incentives for carriers to misclassify revenues between jurisdictions based on different assessment rates. A jurisdictional assessment base also makes it difficult for carriers to allocate the revenues associated with packages, or bundles, of services that include both intrastate and interstate components. Finally, a non-jurisdictional assessment base would enable both the state and federal mechanisms to tap broader revenue bases, thereby lowering the assessment rates needed. Thus, if the Fifth Circuit determines that the Commission may properly assess all revenues for universal service contributions, the Commission may wish to consider using that assessment methodology for high cost support. If the Commission determines that it may assess universal service contributions based on all revenues, the Commission should find that states may do the same for their state universal service mechanisms. Alternatively, the Commission could consider assessing carriers high cost universal service contributions on a flat, per-line basis, which also addresses some of the difficulties of assessing only interstate revenues.

IX. Carrier Recovery of Universal Service Contributions from Consumers

58. In this section, we recommend that the Commission provide to telecommunications carriers that contribute to universal service strict guidance regarding the extent to which they recover their universal service contributions from consumers. We also recommend that the Commission provide such carriers with express instructions regarding the manner in which carriers may depict on bills charges used to recover universal service contributions. Specifically, we recommend that, to the extent permitted by law, the Commission prohibit carriers from depicting such charges as a ''tax'' or as mandated by the Commission or the federal government by terms or placement on the bill. We note that, in truly competitive markets, firms recover a wide variety of costs in a wide variety of ways with no itemized notification of similar increases or decreases to individual consumers.

1. Recovery of Universal Service Contributions from Consumers

59. We reiterate that the choice of whether to collect universal service assessments from end users via a line-item charge on their bills should remain with the carriers, and that carriers are free to tell consumers that the carrier is required to pay to support universal service. Specifically, we recommend, that the Commission give careful consideration to a rule that provides that, for carriers that choose to pass through a line item charge to consumers, the line item assessment be no greater than the carrier's universal

service assessment rate. This will help prevent consumers or classes of consumers from being charged excessively for a carrier's universal service contribution. Such a rule will help prevent consumers or classes of consumers from being charged excessively for a carrier's universal service contributions. Some carriers may attempt to exercise market power and recover through universal service charges in a non-competitive fashion more than they are contributing to universal service, believing that they can describe those charges as mandated by the Commission or federal action. We are also concerned that some carriers may be allocating a disproportionate share of universal service costs to certain classes of consumers. Such practices might contravene § 201(b) of the Act. As noted above, consumers may be less likely to engage in comparative shopping for a carrier if they are led to believe that certain charges are fixed by the Commission or federal government.

2. Characterization of Universal Service Charges to Consumers

60. We believe that a carrier's billing and collection practices for communications services are subject to regulation as common carrier services under Title II of the Act. We believe that inaccurately identifying or describing charges on bills that recover universal service contributions may violate § 201(b) of the Act. For instance, it is important for consumers to understand that universal service support has long been implicit in the rates for various intrastate and interstate telecommunications services. We therefore recommend that the Commission take decisive action to ensure that consumers are not misled as to the nature of charges on bills identified as recovering universal service contributions. Specifically, we recommend that the Commission consider prohibiting carriers from identifying as a ''tax'' or as mandated by the Commission or federal government any charges to consumers used to recover universal service contributions. Similarly, we recommend that the Commission consider prohibiting carriers from incorrectly describing as mandatory or federally-approved any universal service line items on bills. This restriction would include both written descriptions of the charges and any oral descriptions from consumer service representatives as well as placement on the bill. While interstate telecommunications providers are required to contribute to the universal service support mechanisms, they are not required to impose such charges on consumer bills.

61. Cognizant of the First Amendment implications in regulating the manner in which carriers may convey information on consumers' bills, we note that the Supreme Court has held that the government may require a commercial message to ''appear in such a form, or include such additional information, warnings, and disclaimers, as are necessary to prevent its being deceptive.'' On the other hand, restrictions on speech that ban truthful, non-misleading commercial speech about a lawful product cannot withstand scrutiny under the First Amendment. We believe that, pursuant to these Supreme Court rulings, it would not violate the First Amendment to specifically prohibit carriers from including on their bills untruthful or misleading statements regarding the nature of line items used to recover universal service contributions. We urge that the Commission carefully review the record in its proceeding before reaching any conclusion on these issues.

62. We also recommend that the Commission continue to explore, through its Truth-In-Billing proceeding, the possibility of establishing standard nomenclature that carriers could use on their bills to consumers regarding universal service charges. Such standardized language would represent the Commission's view of language that is accurate and not misleading. Standard nomenclature could benefit consumers by having common language across carriers so that consumers can easily identify the charge. We urge that the Commission consider using ''Federal Carrier Universal Service Contribution'' as standard nomenclature describing any universal service line item on consumer bills. The line item should be accompanied by an explanation that the carrier has chosen to separate its universal service contribution from its other costs of business, and to display the contribution as a line item on the consumer's bill.

63. Finally, we note that many state regulatory agencies either have in place or are considering establishing requirements that will curtail the practice of some carriers of mischaracterizing universal service line items on bills. In addition, other federal agencies, such as the Federal Trade Commission, may have jurisdiction that overlaps or is concurrent with that of the Commission or state regulatory agencies. We therefore recommend that the Commission work closely with these agencies to ensure that consumers are provided with complete and accurate information regarding the nature of universal service line items.

X. Periodic Review

64. The Act contemplates that universal service is an ''evolving'' level of service. The Act further contemplates that the Joint Board may periodically make recommendations to the Commission regarding modifications in the definition of services supported by the federal universal service support mechanism. Moreover, we recognize that the telecommunications industry is rapidly changing and that both competition and technological changes will affect universal service needs in rural, insular, and high cost areas of the nation. We therefore recommend that the Commission continue to consult with this Joint Board on matters addressed in this *Second Recommended Decision*. We also recommend that the Joint Board and the Commission broadly reexamine its high cost universal service mechanism no later than three years from July 1, 1999.

XI. Recommending Clauses

65. For the reasons discussed herein, this Federal-State Joint Board, pursuant to § 254(a)(1) and § 410(c) of the Communications Act of 1934, as amended, 47 U.S.C. 254(a)(1) and 410(c), recommends that the Federal Communications Commission adopt the proposals described above relating to high cost universal service support mechanisms for non-rural carriers.

List of Subjects

47 CFR Part 36

Reporting and recordkeeping requirements, Telephone.

47 CFR Part 54

Universal service.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–32736 Filed 12–8–98; 8:45 am]

BILLING CODE 6712–01–P

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1526 and 1552

[FRL–6196–6]

Acquisition Regulation: Contractor Proposal Evaluations

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule with request for comments.

SUMMARY: The Environmental Protection Agency (EPA) is amending the EPA Acquisition Regulation (EPAAR) to include new regulations on Socioeconomic Programs, and to amend regulations regarding Solicitation Provisions and Contract Clauses. These amendments will allow contractors to receive technical points in the proposal evaluation process for their ability to utilize local employment and training while performing under EPA contracts. The use of the solicitation provision and contract clause will assist in decreasing the unemployment rate and support economic development (i.e., provide training to local employees) in geographical locations where contractual requirements will be performed.

DATES: Comments should be submitted not later than February 8, 1999.

ADDRESSES: Written comments should be submitted to the contact listed below at the following address: U.S. Environmental Protection Agency, Office of Acquisition Management (3802R), 401 M Street, SW, Washington, D.C. 20460. Comments will also be accepted on disks in WordPerfect 6.1 format or by electronic mail (E-mail) to smith.frances@epamail.epa.gov. E-mail comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. No Confidential Business Information (CBI) should be submitted through E-mail.

FOR FURTHER INFORMATION CONTACT: Frances Smith, U.S. Environmental Protection Agency, Office of Acquisition Management, (3802R), 401 M Street, SW, Washington, D.C. 20460, Telephone: (202) 564–4368.

SUPPLEMENTARY INFORMATION:

A. Background

The EPA Office of Small and Disadvantaged Business Utilization initiated an effort to encourage local hiring and training in EPA Superfund contracts. The overall objective of the OSDBU initiative was to support economic development in areas where EPA contracts would be performed. As such, this proposed rule is intended to assist in decreasing the unemployment rate and providing training to local employees in geographical locations of contractor performance regarding any type of procurement above the simplified acquisition threshold ($100,000). The Agency has determined that competing offerors may be evaluated on the extent to which they employ and train citizens residing in the communities serviced by EPA contracts. Offerors may be evaluated in such a manner provided that the employment and training preference is based on geography.

The Department of Justice (DOJ) has recognized preferences based on geography as legitimate race-neutral alternatives to achieve agencies' contracting goals. The DOJ indicated that race-neutral alternatives may include preferences based on wealth, income, education, family, and geography. EPA is hereby establishing a preference based solely on geography (i.e., location of contract performance).

B. Executive Order 12866

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866; therefore, no review is required by the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB).

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this proposed rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Comments regarding Paperwork Reduction Act concerns should be sent to OMB (Attn: EPA Desk Officer). OMB is required to make a decision concerning the collection of information contained in the proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to EPA on this proposed rule.

D. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), whenever EPA is required to publish notice of general rulemaking, EPA must prepare an initial regulatory flexibility analysis (IRFA) describing the economic impact of the proposal on small entities, unless the Agency certifies that a proposed rule will not have a ''significant economic impact on a substantial number of small entities.'' As defined in RFA/SBREFA, small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. After consideration of the economic impacts of today's proposed rule on small entities, the Agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Because it is anticipated that the proposed preference for local employment and training contemplated herein will be used primarily in the Agency's Superfund contracts, an impact on a substantial number of small entities is not expected. Historically, the Agency's Superfund contracts have been large enough in scope where small business participation at the prime contractor level has not been substantial. Furthermore, if there was any economic impact, it would not be significant. Any evaluation credit given to an offeror competing for an Agency contract for its proposed local employment and training would not be significant in comparison to other evaluation criteria used in determining the awardee of the contract.

The monthly status report identified in this proposed rule is a deliverable requirement. This deliverable requires contractors to specifically track the following throughout the duration of the contract: the number of local residents employed, the labor category for each local employee, the number of hours each local employee worked, the labor rate for each local employee, the date each local employee received specific training, the amount of training hours each local employee received, the start date for each local employee, and the date and reason for termination of employment by the contractor or local employee.

E. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess their regulatory actions on State, local, and tribal governments, and the private sector. This proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in aggregate, or the private sector in one year. The rule is not subject to the requirements of sections 202 and 205 of the UMRA.

F. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''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 on environmental health or safety risks.

List of Subjects in 48 CFR Parts 1526 and 1552

Environmental protection, Government procurement.

Therefore, 48 CFR Chapter 15 is proposed to be amended as set forth below:

SUBCHAPTER D—[AMENDED]

1. Part 1526, Other Socioeconomic Programs, is added to Subchapter D of the EPAAR as follows:

PART 1526—OTHER SOCIOECONOMIC PROGRAMS

Subpart 1526.1—Preference for Local Employment and Training

1526.100 Scope of subpart.
1526.101 Definitions.
1526.102 Policy.
1526.103 Solicitation provision and contract clause.
1526.103–1 Solicitation provision.
1526.103–2 Contract clause.

Authority: Sec. 205(c), 63 stat. 390, as amended.

Subpart 1526.1—Preference for local employment and training.

1526.100 Scope of subpart.

This subpart provides a preference for prime contractors to employ, hire, and train local employees in geographical locations where contractual requirements will be performed. This preference is intended to assist in decreasing the unemployment rate and to provide training to local employees in geographical locations of contract performance. Offerors will receive technical points in the proposal evaluation process for their ability to employ and train citizens in the geographical location of contract performance.

1526.101 Definitions.

Local employment, as used in this subpart, refers to employment and new hiring of people who reside in the geographical location where contractual requirements will be performed.

Geographical location, as used in this subpart, refers to the state and county where contractual requirements will be performed.

Training, as used in this subpart, refers to skilled-based instructions provided to local residents (local employees) to perform specified contractual requirements.

1526.102 Policy.

(a) The preference to use local employment and training as an evaluation factor for award is optional in EPA acquisitions. Contracting officers may include the solicitation provision at 1552.226–70 and the contract clause at 1552.226–71 in solicitations and contracts to encourage contractors to employ, hire, and train local residents.

(b) Contracting officers, in consultation with the project officer, shall define the specific geographical location boundaries for local employment and training in each solicitation and contract. The designated geographical location must coincide with the ''area type'' indicator used to identify the unemployment rate for the geographical location (see paragraph (e) of this section). Offerors must ensure that employees reside within the stated geographical location boundaries throughout the duration of the contract.

(c) The Bureau of Labor Statistics shall be used to verify unemployment statistics in geographical areas. Contracting officers, in consultation with project officers, shall compare the National unemployment rate with the unemployment rate in the designated geographical area where contract performance will take place.

(1) If the unemployment rate in the designated geographical area is equivalent to or exceeds the National unemployment rate, this clause should be used to support economic development in that particular geographical area.

(2) If the unemployment rate in the designated geographical area is less than the National unemployment rate, this clause may also be used if deemed appropriate by the contracting officer. The contracting officer shall document the contract file with rationale to support use of this clause when the unemployment rate in the designated geographical area is less than the National unemployment rate.

(d) The contracting officer and the project officer may obtain the National unemployment rate by use of the Internet website as follows:

(1) http://stats.bls.gov/blshome.htm

(2) Click ''Economy at a Glance''

(3) Review the ''unemployment rate'' pertaining to the most current month in which the solicitation will be issued.

(e) The contracting officer and the project officer shall verify the Bureau of Labor Statistics for unemployment rates in designated geographical areas by use of the Internet website as follows:

(1) http://stats.bls.gov/blshome.htm

(2) Click ''Data''

(3) Click ''Selective Access''

(4) Scroll down and click on ''Local Area Unemployment Statistics''

(i) Check ''not seasonally adjusted'' and click ''next form''

(ii) Select ''unemployment rate'' and click ''next form''

(iii) Choose the ''area type'' that corresponds with the designated geographical location

(iv) Select the most current year, format ''2. Table'', ''HTML Tables: Yes'', ''Catalog: Yes'', ''Delimiter: Space'', and click retrieve data.

(f) Compare the National unemployment rate to the unemployment rate pertaining to the most current month in which the solicitation will be issued.

(g) The contractor's current employees who reside in the designated geographical area may be included toward the achievement of technical evaluation points when this clause is used.

(h) All local employees must provide proof of residency to the contractor (i.e., copy of employee's driver's license or confirm address on W–2 Form).

1526.103 Solicitation provisions and contract clause.

1526.103–1 Solicitation provision.

Contracting officers shall include the provision at 1552.226–70 in solicitations when the technical evaluation criteria will include technical points pertaining to the contractor's ability to employ, hire, and train local residents in the geographical location of contract performance.

1526.103–2 Contract clause.

Contracting officers shall include the contract clause at 1552.226–71 in contracts to require the contractor to deliver monthly status reports on local employment and training.

PART 1552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2. The authority citation for Part 1552 continues to read as follows:

Authority: The provisions of this regulation are issued under 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended.

3. Part 1552 is amended by adding 1552.226–70 and 1552.226–71 as follows:

1552.226–70 Preference for local employment and training certification.

As prescribed in 1526.103–1, insert the following provision in solicitations when applicable.

Preference for Local Employment and Training Certification (Dec 19XX)

(a) The offeror hereby certifies that local employment and training [ ] will [ ] will not be used in the geographical location where contractual requirements will be performed.

(b) The offeror hereby certifies that procedures for local employment and training [ ] are [ ] are not stated in the offeror's proposal, and [ ] will [ ] will not be utilized in the event that the offeror is awarded this contract.

(c) The offeror [ ] has [ ] has not specified the labor category, labor hours, labor rate, and the amount of training hours for local employment in the offeror's proposal.

(d) The offeror [ ] is [ ] is not aware that the technical evaluation criteria concerning this award will include technical points for the offeror's ability to utilize local employment and training.

(End of provision)

1552.226–71 Preference for local employment and training.

As prescribed in 1526.103–2, insert the following clause in contracts when applicable.

Local Employment and Training (Dec 19XX)

(a) The contractor shall employ and train __ [contracting officer insert # of people] local residents in performance of this contract. A total of __ [contracting officer insert # of people] local residents must be employed and trained throughout the duration of this contract.

(b) Upon employing local residents, the contractor shall ensure that each local resident receives training associated with the required contractual performance.

(c) The contractor shall deliver monthly status reports consisting of the number of local residents employed, the labor category for each local employee, the number of hours each local employee worked, the labor rate for each local employee, the date each local employee received specific training, the amount of training hours each local employee received, the start date for each local employee, and the date and reason for termination of employment by the contractor or local employee.

(d) The contractor shall deliver the information identified in paragraph (c) of this clause, to the contracting officer and project officer as part of the standard monthly report specified in this contract.

(End of clause)

Dated: November 17, 1998.

Betty L. Bailey,

Director, Office of Acquisition Management.

[FR Doc. 98–32683 Filed 12–8–98; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 63, No. 236
Wednesday, December 9, 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

Submission for OMB Review; Comment Request

December 2, 1998.

The Department of Agriculture has submitted the following information collection requirements(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An emergency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Child Nutrition Database.

OMB control number: 0584–New.

Summary of collection: The Child Nutrition (CN) Database is a necessary component in implementation of USDA's Food and Nutrition Service (FNS) National School Lunch Program (NSLP) and School Breakfast (SBP): School Meals Initiative for Healthy Children final rule published in the June 13, 1995 Federal Register, Volume 60, No. 113. The overriding purpose in NSLP and SBP initiatives is to serve more nutritious and healthful meals to school children. FNS has updated the regulations which established the specific nutrition criteria for reimbursable school meals incorporating the Recommended Dietary Allowances (RDA) issued by the Food and Nutrition Board, Commission on Life Sciences, National Research Council for key nutrients, energy allowances for calories, and the most current nutritional standards as outlined in the Dietary Guidelines. FNS will collect information using a database that contains information on the nutritional composition of a variety of foods.

Need and use of the information: FNS will collect information on (1) USDA commodities; (2) USDA Nutrient Database for Standard Reference food items which are used in the SBP and NSLP; (3) quantity recipes for school food service developed by USDA; and (4) brand name commercially processed foods. The information gathered for the CN Database is required to be used in software programs approved by USDA for use in meeting the nutrient standards and nutrition goals of the Child Nutrition Program meal pattern. The information will be used by both the States and FNS program staffs.

Description of respondents: Business or other for-profit.

Number of respondents: 100.

Frequency of responses: Reporting: Other (as needed).

Total burden hours: 6,000.

National Agricultural Statistics Service

Title: 1998 Census of Aquaculture.

OMB control number: 0535–New.

Summary of collection: The primary objective of the 1998 Census of Aquaculture is to obtain a comprehensive and detailed picture of the aquaculture sector of the economy. The Census of Aquaculture will be the only source of data comparable and consistent at the national and state level. The Census of Aquaculture will cover all operations in each state that produced or sold $1,000 or more of aquaculture or aquaculture products during 1998. Data from the 1998 Census of Aquaculture will be tabulated to provide benchmark statistics at the U.S. and state levels. Authority to administer the Census of Aquaculture is covered by Public Law 105–113, the Census of Agriculture Act of 1997 (Title 7, United States Code). The National Agricultural Statistics Service (NASS) will collect information using survey questionnaires.

Need and use of the information: NASS will collect information on the numbers of operations, land and water acreage, method of production, total production, sales outlets and sales by aquaculture species. The Census of Aquaculture provides the only source of comparable, detailed state level data descriptive of the structure of the aquacultural production sector of the United States economy. Census data are used by the United States economy. Census data are used by the Administration, Federal agencies, and Congress to formulate and evaluate national aquaculture policies and programs. Without the Census of Aquaculture, there would be no reliable source of data consistent for all 50 states.

Description of respondents: Farms.

Number of respondents: 4,800.

Frequency of responses: Reporting: Other (One-time only).

Total burden hours: 2,400.

Emergency approval for this information collection has been requested by November 20, 1998.

Farm Service Agency

Title: Disaster Reserve Flood Compensation Program (7 CFR 1439).

OMB control number: 0560–New.

Summary of collection: Under Section 813 of the Agriculture Act of 1970 (7 U.S.C. 1427a) and S. Con. Res. 63, the Secretary of Agriculture is authorized to utilize the $12 million remaining from the sale of commodities held in the disaster reserve to compensate eligible producers affected by long-term flooding of agriculture land. The program will provide payments to livestock producers with land that is

inaccessible or incapable of crop production, grazing, or haying at any time during the 1998 fiscal year due to flooding. The eligible land must be physically located in counties that have been declared a disaster under a Presidential Declaration or Secretarial Designation during the period January 1, 1997 through August 1, 1998. The Farm Service Agency (FSA) will collect information using form CCC–454, Flood Compensation Program.

Need and use of the information: FSA will collect information to determine eligible producers who are currently engaged in the production of livestock in any of the years 1992–1997; determine eligible livestock producers who are under obligation due to a binding lease to make a fair market value rental payment for crop year 1998; and determine eligible producers who have land that is inaccessible or incapable of crop production, haying or grazing due to flooding in FY 98. Eligible producers will be required to provide documents to support their reported disaster such as crop reports, disaster reports, photo copies and slides of the affected areas; form CCC–454 and a copy of lease agreement, if a leaseholder.

Description of respondents: Farms; Federal Government; State, Local or Tribal Government.

Number of respondents: 6,500.

Frequency of responses: Reporting: On occasion.

Total burden hours: 130.

Emergency approval for this information collection has been requested by November 23, 1998.

Forest Service

Title: Economic, Social, and Cultural Contributions of Livestock Ownership.

OMB control number: 0596—New.

Summary of collection: Management of federal lands is hampered in many cases because land managing agencies lack sufficient information to understand and monitor sociocultural values and changing attitudes toward land and resource use. Insufficient recent information of this type hampers efforts of the USDA Forest Service (FS) to work with small livestock operators who graze their cattle under permits on Forest Service-managed lands in northern New Mexico. Many of these permittees are descendants of Hispanic settlers who have farmed and ranched in the area for 400 years. Cultural differences and historical issues of land ownership and use contribute to disagreements and misunderstandings between the permittees and federal land managers. This pilot on the Espanola Ranger District of the Santa Fe National Forest and the Canjilon Ranger District of the Carson National Forest will provide baseline data on economic, social, and cultural contributions of livestock ownership to the permittees of northern New Mexico. The Forest Service (FS) will collect information in a pilot study using questionnaires and face-to-face interviews.

Need and use of the information: FS will collect information to assist managers of the forest to (1) work more effectively with the grazing permittees by facilitating increased intercultural understanding and (2) to develop and update grazing allotment plans, especially for the two targeted districts. This information is also valuable in public education programs concerning the Hispanic culture of northern New Mexico. The results of this pilot study will contribute to the development of a broader study of all permittees in the Santa Fe and Carson National Forests.

Description of respondents: Individuals or households; Business or other for-profit; Farms.

Number of respondents: 112.

Frequency of responses: Reporting: On occasion.

Total burden hours: 364.

National Agricultural Statistics Service

Title: Wildlife Damage.

OMB control number: 0535–0217.

Summary of collection: The National Agricultural Statistics Service's (NASS) primary function is to prepare and issue current official state and national estimates of crop and livestock production, disposition, and prices. Auxiliary services, such as statistical consultation, data collection, summary tabulation, and analysis are performed for other Federal and state agencies on a reimbursable basis as the need arises. NASS has entered into an agreement with the Animal and Plant Health Inspection Service (APHIS) to conduct nationwide sample surveys of selected fruits, nut, and berry producers for the purpose of assessing the true incidence, extent, specific cause, and monetary value of agricultural product and resource losses caused by vertebrate wildlife. APHIS and NASS have entered into this agreement in direct response to specific recommendations to APHSI by the National Animal Damage Control Advisory Committee (NADCAC) in recognition of the present lack of current information available to the APHIS' Wildlife Service for use in strategic planning. NASS will collect information using a sampling survey to evaluate wildlife damage to livestock.

Need and use of the information: NASS will collect information on the development of valid statistical data reflecting the percentage of fruit, nut, and berry growers experiencing losses of products or resources and the total dollar losses at the national level caused by vertebrate wildlife. Goals of the survey are to assess the agricultural community's use and name recognition of the Wildlife Service's program at a regional level, and provide accurate measurement of wildlife damage to agricultural products for use in long range planning and fund allocation.

Description of respondents: Farms.

Number of respondents: 10,400.

Frequency of responses: Reporting: Other (One time).

Total burden hours: 2,253.

Food and Nutrition Service

Title: Waiver Guidance for Food Stamp Time Limits.

OMB control number: 0584–0479.

Summary of collection: Section 824 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193 (PRWORA) establishes a time limit for the receipt of food stamp benefits for certain able-bodied adults who are not working. The provision authorizes the Secretary of Agriculture, upon a State agency's request, to waive the provision for any group of individuals if the Secretary determines ''that the area in which the individual resides has an unemployment rate of over 10 percent, or does not have a sufficient number of jobs to provide employment for the individuals.'' The Food and Nutrition Service (FNS) will collect information using waiver requests for state officials.

Need and use of the information: FNS will collect information on unemployment rates of over 10 percent; number of jobs to provide employment to individuals and areas in which they reside. FNS will use the information provided by State food stamp agencies to evaluate whether the statutory requirements for a waiver of the food stamp time limit have been met.

Description of respondents: State, Local, or Tribal Government; Federal.

Number of respondents: 44.

Frequency of responses: Reporting: On occasion.

Total burden hours: 2,000.

Forest Service

Title: Application for the Senior Community Service Employment Program.

OBM control number: 0596–0099.

Summary of collection: The Senior Community Service Employment Program (SCSEP) is designed to provide part-time employment opportunities and training to low-income and disadvantaged persons aged 55 or above.

In order for the Forest Service (FS) to establish the eligibility of each individual for enrollment into the program, it is necessary to collect income information and age data for each individual. The application document is the tool needed to collect this pertinent data and other relevant information required by the Department of Labor. The authority for this data collection is contained in the **Federal Register** Rules and Regulations, Section, 641.305, prepared by the Department of Labor, Employment and Training Administration. The Forest Service will collect information using applications submitted by individuals.

Need and use of the information: FS will collect identifying information from individuals as well as data on family income, age, and type of public assistance received. FS will use the information to determine eligibility for enrollment into the Senior Community Service Employment Program. If FS does not collect the personal income and age data from each person applying for the SCSEP, the FS will be unable to determine participant eligibility in this targeted program; will be in violation of the current law; and would not be able to continue as a sponsor of the program.

Description of respondents: Individuals or households.

Number of respondents: 6,500.

Frequency of responses: Reporting: Other (Initial Application).

Total burden hours: 1,083.

Office of the Secretary, White House Liaison

Title: Advisory Committee Membership Background Information.

OMB control number: 0505–0001.

Summary of collection: Section 1804 of the Food and Agriculture Act of 1977 (7 U.S.C. 2281, et seq.) requires the Department to provide information concerning advisory committee members' principal place of residence, persons or companies by whom employed, and other major sources of income. Board members' under each program are appointed by the Secretary. Some of the information contained on Form AD–755 is used by the Department to conduct background clearances of prospective board members required by departmental regulations. This clearance is required by all committee members who are appointed by the Secretary. The Office of the Secretary, White House Liaison, in conjunction with agency personnel, will collect information using Form AD–755, Advisory Committee Membership Background Information.

Need and use of the information: The Office of the Secretary, White House Liaison will collect information on the background of the nominees to make sure there are no delinquent loans to the United States Department of Agriculture, USDA, as well as making sure they have no previous record that could be a negative reflection to the USDA. The information obtained from the form is also used in the compilation of an annual report to Congress. Failure of the Department to provide this information would require the Secretary to terminate the pertinent advisory committee.

Description of respondents: Individuals or households.

Number of respondents: 1,631.

Frequency of responses: Reporting: Monthly.

Total burden hours: 760.5.

Emergency approval for this information collection has been requested by December 30, 1998.

Forest Service

Title: Disposal of Mineral Materials.

OMB control number: 0596–0081.

Summary of collection: The Forest Service (FS) is responsible for overseeing the management of National Forest System land. The Multiple-Use Mining Act of 1955 (30 U.S.C. 601, 603, 611–615) gives the FS specific authority to manage the disposal of mineral materials mined from National Forest land. FS uses two separate forms, FS–2800–9 and R1–FS–2850–1, to collect detailed information on the planned mining and disposal operations as well as a contract for the sale of mineral materials.

Need and use of the information: FS will use information collected from the public to ensure that environmental impacts of mineral material disposal are minimized. A review of the operating plan provides the authorized officer the opportunity to determine if the proposed operation is appropriate and consistent with all applicable land management laws and regulations. The information also provides the means of documenting planned operations and the terms and conditions that the Forest Service deems necessary to protect surface resources.

Description of respondents: Business or other for-profit; Individuals or households.

Number of respondents: 3,000.

Frequency of responses: Reporting: On occasion.

Total burden hours: 7,500.

National Agricultural Statistics Service

Title: Year 2000 Survey.

OMB control number: 0535–New.

Summary of collection: There is widespread concern regarding the Year 2000 (Y2K) technology problem. Y2K is an unprecedented issue among all industries including agriculture. The USDA's Y2K Food Supply Working Group is leading an effort to evaluate the Y2K readiness of the agricultural industry. The National Agricultural Statistics Service (NASS) has been asked to assist by providing an assessment of the awareness and preparation by the agricultural production sector for the year 2000. NASS will collect information from farm operators about their Y2K awareness and readiness using a telephone survey.

Need and use of the information: NASS will collect information on the impact of the year 2000 problem on the food industry in general-from farm to fork; description of the Department's Year 2000 outreach program; and an assessment of the general preparedness of the food industry to continue uninterrupted business despite the century date change.

Description of respondents: Farms.

Number of respondents: 1,300.

Frequency of responses: Reporting: Other (One time only).

Total burden hours: 325.

Emergency approval for this information collection has been requested by December 8, 1998.

National Agricultural Statistics Service

Title: Census of Agriculture—American Samoa.

OMB control number: 0535–0226.

Summary of collection: The census of agriculture is the only source of agricultural data comparable and consistent at the national, state and country or county-equivalent levels for the United States and four territories/commonwealths. The census of agriculture, conducted on a 5-year cycle, covers all agricultural operations in each state, the Commonwealth of Puerto Rico, Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands that meet the farm definition. Authority to administer the census of agriculture was transferred from the Bureau of Census to the USDA's National Agricultural Statistics Service (NASS). The information collection is being resubmitted as an emergency submission to obtain approval to conduct an agricultural census in American Samoa beginning in January 1999. In addition to the census of commercial agricultural operations, a sample of all American Samoa residences will be surveyed to determine the extent of subsistence farming on the island. Representatives of the U.S. Department of Interior and the Government of American Samoa

recently approached NASS to request that an agriculture census and a survey of residences covering 1998 be conducted in American Samoa, and that subsequently, American Samoa be included in the 5-year agriculture census cycle. NASS will collect information using a survey of the American Samoa residences.

Need and use of the information: NASS will collect information on the number and type of farms, land use, crop acreage and production, livestock inventory and sales production expenses, farm-related income, and other characteristics. The data will be used by the Administration, Federal agencies, and Congress to formulate and evaluate national farm and rural policies and programs, and by the USDA and Bureau of Economic Analysis to compile the farm sector economic indicators and the national income accounts. Without the census of agriculture, there would be no reliable source of data consistent throughout the 50 states and over 3,000 counties in the United States.

Description of respondents: Farms, Individuals or households.

Number of respondents: 3,589,580.

Frequency of responses: Reporting: Other (One time only).

Total burden hours: 1,320,705.

Emergency approval for this information collection has been requested by December 11, 1998.

Nancy Sternberg,

Departmental Information Clearance Officer.

[FR Doc. 98–32522 Filed 12–8–98; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Cedar Run Watershed, Fauquier County, Virginia

AGENCY: U.S. Department of Agriculture, Natural Resources Conservation Service.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Natural Resources Conservation Service Guidelines (CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that a Supplemental Environmental Impact Statement is not being prepared for the Cedar Run Watershed-Multiple Purpose Structure Site 6 in Fauquier County, Virginia.

FOR FURTHER INFORMATION CONTACT: Ms. M. Denise Doetzer, State Conservationist, USDA, Natural Resources Conservation Service, Culpeper Building, Suite 209, 1606 Santa Rosa Road, Richmond, Virginia 23229–5014, telephone (804) 287–1691.

SUPPLEMENTARY INFORMATION: The Environmental Assessment of this federally assisted action provides evidence that the environmental effects associated with the proposed changes from the original EIS to the current project proposal, will not result in significant direct, indirect, or cumulative impacts on the environment. Therefore, Ms. M. Denise Doetzer, State Conservationist, has issued a Finding of No Significant Impact and determined that the preparation and review of a Supplemental Environmental Impact Statement are not needed for this project.

The project purposes are flood control and municipal and industrial water supply. The planned works of improvement include the installation of a combination roller compacted concrete and earth fill multiple purpose flood control and water supply structure approximately 1,000 feet upstream of the Auburn Bridge at Route 602 in Fauquier County, Virginia.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single-copy requests at the above address. Basic data developed during the Environmental Assessment are on file and may be reviewed by contacting Ms. M. Denise Doetzer, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901, Watershed and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

M. Denise Doetzer,

State Conservationist.

[FR Doc. 98–32674 Filed 12–8–98; 8:45 am]

BILLING CODE 3410–16–M

CENSUS MONITORING BOARD

U.S. Census Monitoring Board; Notice of Public Hearing on the Census 2000 Dress Rehearsal

Pursuant to P.L. 105–119, the enabling statute for the U.S. Census Monitoring Board, notice is hereby given that a meeting of the U.S. Census Monitoring Board will be held on Wednesday, December 16, 1998 from 8:00 a.m. to 12:30 p.m., in the City of Sacramento Council Chambers, 915 I Street, Sacramento, CA 95814–2684.

This meeting will be open to the public. The topic for discussion will be the Census 2000 Dress Rehearsal.

Eslela B. Mendoza,

Communications Director.

[FR Doc. 98–32685 Filed 12–8–98; 8:45 am]

BILLING CODE 3510–07–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Louisiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Louisiana Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 8:00 p.m. on January 14, 1999, at the Hyatt Hotel, Canal A Room, 500 Poydras Street, New Orleans, Louisiana 70140. The purpose of the meeting is to plan for future activities and receive civil rights monitoring issues from Committee members.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 2, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–32608 Filed 12–8–98; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Dakota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the South Dakota Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m. on January 26, 1999, at the Radisson Encore, 4300 Empire Place, Sioux Falls, South Dakota 57106. The purpose of the meeting is to review past Committee activities and plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact John Dulles, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 2, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–32609 Filed 12–8–98; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1011]

Grant of Authority for Subzone Status: Meadowcraft, Inc. (Wrought Iron Patio Furniture), Yuma County, Arizona

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, the Yuma County Airport Authority, grantee of Foreign-Trade Zone 219, has made application to the Board for authority to establish special-purpose subzone status at the wrought iron patio furniture finishing and distribution (non-manufacturing) facility of Meadowcraft, Inc., located in Yuma County, Arizona (FTZ Docket 83–97, filed 12/16/97);

Whereas, notice inviting public comment has been given in the **Federal Register** (63 FR 204, 1/5/98); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application would be in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the wrought iron patio furniture finishing and distribution facility of Meadowcraft, Inc., located in Yuma County, Arizona, (Subzone 219A), at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the condition that privileged foreign status (19 CFR § 146.41) shall be elected on all foreign merchandise admitted to the subzone.

Signed at Washington, DC, this 1st day of December, 1998.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–32725 Filed 12–8–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 54–98]

Foreign-Trade Zone 73—Baltimore/Washington International Airport, Maryland Application for Foreign-Trade Subzone Status: Northrop Grumman Corporation—Electronic Sensors and Systems Division (Electronic Sensoring, Processing, and Communications Technologies), Baltimore, MD, Area

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Maryland Department of Transportation, grantee of FTZ 73, requesting special-purpose subzone status for the manufacturing facilities (telecommunication/information systems) of the Electronic Sensors and Systems Division (ESSD) of Northrop Grumman Corporation, located at sites in the Baltimore, Maryland, area. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on December 1, 1998.

The Northrup Grumman ESSD facilities are located at eleven sites in the Baltimore, Maryland, area (404 acres, 3.6 million sq. ft.): *Site 1* (1 building/450,000 square feet on 43 acres)—Advanced Technology Labs, located at 1212 Winterson Road, Linthicum; *Site 2* (10 buildings/1.7 million sq. ft. on 129 acres)—main manufacturing site, located at 7323 Aviation Boulevard, BWI Airport, Linthicum; *Site 3* (4 buildings/14,000 sq. ft. on 86 acres)—test ranges located at 7141 Ridge Road, Hanover; *Site 4* (1 building/114,000 sq. ft. on 5 acres)—Material Acquisition Center, located at 7001 Aviation Boulevard, Glen Burnie; *Site 5* (5 buildings/274,000 sq. ft. on 49 acres)—located at 895 & 897 Oceanic Drive, Annapolis; *Site 6* (1 building/182,000 sq. ft. on 35 acres)—located at 7301 Sykesville Road, Sykesville; *Site 7* (6 buildings/120,000 sq. ft. on 5 acres)—warehouses located at Trident Court #6, Halethorpe; *Site 8A* (1 building/69,000 sq. ft. on 1.5 acres)—warehouse located at 7041 Troy Hill Drive, Elkridge; *Site 8B* (1 building/135,000 sq. ft. on 3 acres)—warehouse located at 7040 Troy Hill Drive, Elkridge; *Site 9* (2 buildings/105,000 sq. ft. on 5.6 acres)—repair center located in Hunt Valley; *Site 10* (1 building/143,000 sq. ft. on 11 acres)—located at 1745 W. Nursery Road, Linthicum; and *Site 11* (2 buildings/316,000 sq. ft. on 31 acres)—located at 1580B W. Nursery Road, Linthicum.

The facilities (7,021 employees) are used for the development and manufacture of telecommunication and information systems products and related software for defense, aerospace, and transportation. Product categories include: combat electronic systems (including airborne radar, air defense, electronic warfare, electro-optical sensors, shipboard radar, sonar and anti-submarine warfare), airborne surveillance and reconnaissance, air traffic control, marine propulsion and power generation, ground-based and satellite telecommunications, information services and data automation. Some of the components used in the manufacturing process are purchased from abroad (an estimated 10–15% of finished product value),

including processed silicon carbides; bolts; nails; metal aircraft mountings; coated rods and cored wire for soldering; machinery for molding rubber or plastic; other machinery; electrical transformers; speed drive controllers for electric motors; static converters; electrical ignition starting system parts; single line telephone sets; carrier-current line system apparatuses; sound recording apparatuses; pickup cartridges for sound or video recording or reproducing apparatuses; citizens-band transceivers; radar apparatuses; radio navigational aid apparatuses; video monitors; antennas/antenna reflectors/parts; radar apparatus printed-circuit assemblies or subassemblies; other audio/video components; parts of printed circuit assemblies of radar; radio navigational aid or radio remote control apparatuses; assemblies and subassemblies of radar apparatuses; parts of radar apparatuses; electrical apparatuses for switching or protecting circuits; signal generators; other electrical machines and apparatuses; parts of other electrical machines and apparatuses; coaxial cable and other electrical conductors; ignition wiring sets and other wiring sets; other electric conductors fitted with connectors; other electric conductors; other electrical parts; aircraft launching gear/deck-arrestors/parts; gauges; measuring or checking equipment; parts of measuring or checking equipment; and process control instruments and apparatus (duty rates on these items range from 0.1% to 5.7%). The company also uses a number of foreign-sourced items that are duty free.

Zone procedures would exempt ESSD from Customs duty payments on foreign components used in export production. FTZ procedures will help ESSD to implement a more cost-effective system for handling Customs requirements (including reduced brokerage fees and Customs merchandise processing fees). On its domestic sales, ESSD also would be able to choose the lower duty rate that applies to the finished products (duty-free to 7.0%) for the foreign components noted above. FTZ status may also make a site eligible for benefits provided under state/local programs. The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 8, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to February 22, 1999.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th and Pennsylvania Avenue, N.W., Washington, D.C. 20230

U.S. Department of Commerce Export Assistance Center, World Trade Center, Suite 2432, 401 East Pratt Street, Baltimore, Maryland 21202

Dated: December 1, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–32727 Filed 12–8–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1008]

Grant of Authority; Establishment of a Foreign-Trade Zone, Lakewood, New Jersey

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Township of Lakewood, New Jersey (the Grantee), has made application to the Board (FTZ Docket 81–97, filed 12/8/97), requesting the establishment of a foreign-trade zone at sites in Lakewood, New Jersey, adjacent to the Philadelphia Consolidated Customs port of entry;

Whereas, notice inviting public comment has been given in the **Federal Register** (62 FR 65655, 12/15/97); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report and finds that the requirements of the Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 235, at the sites described in the application, subject to the Act and the Board's regulations, including Section 400.28, and subject to the standard 2,000-acre activation limit.

Signed at Washington, DC, this 25th day of November, 1998.

Foreign-Trade Zones Board.

William M. Daley,

Secretary of Commerce, Chairman and Executive Officer.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–32726 Filed 12–8–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–806]

Pure Magnesium From Ukraine: Notice of Court Decision and Suspension of Liquidation

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

ACTION: Notice.

SUMMARY: On October 20, 1998, in *Gerald Metals, Inc.* v. *United States*, Court No. 95–06–00782, Slip Op. 98–148 (CIT), a lawsuit challenging the final affirmative determination of the U.S. International Trade Commission (the ''Commission'') that less-than-fair-value (''LTFV'') imports of pure magnesium from Ukraine were causing material injury to the domestic industry, the U.S. Court of International Trade (''CIT'') affirmed the Commission's remand determination, which found no material injury as well as no threat to material injury, and entered a judgment order dismissing the case. The issue of material retardation of the establishment of a U.S. industry was never raised before the Commission. Consistent with the decision of the U.S. Court of Appeals for the Federal Circuit (''Federal Circuit'') in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) (''*Timken*''), the U.S. Department of Commerce (the ''Department'') will continue to order the suspension of liquidation of the subject merchandise until there is a ''conclusive'' decision in this case. If the case is not appealed, or

if it is affirmed on appeal, the Department will revoke the antidumping order covering the subject merchandise.

EFFECTIVE DATE: December 9, 1998.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Everett Kelly, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1766 or (202) 482–4194, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published notice of its final affirmative LTFV determination covering the subject merchandise, *i.e.*, imports of pure magnesium from Ukraine, on March 30, 1995, *Final Affirmative Determination of Sales at Less Than Fair Value; Pure Magnesium from Ukraine,* 60 FR 16432, and the Commission subsequently made its final affirmative determination that a U.S. industry was being materially injured by reason of imports of the subject merchandise. *See Magnesium from China, Russia, and Ukraine,* 60 FR 26456 (May 17, 1995). The Department published an antidumping order covering the subject merchandise on May 12, 1995. *See Antidumping Duty Orders; Pure Magnesium from the People's Republic of China, the Russian Federation and Ukraine,* 60 FR 25691.

Following publication of the antidumping duty order, Gerald Metals, Inc. (''Gerald Metals'') an interested party in this case, filed a lawsuit with the CIT challenging the Commission's final affirmative determination of material injury. In its first decision, the CIT affirmed the Commission's final affirmative determination of material injury. However, the Federal Circuit subsequently directed the CIT to vacate its decision to affirm the Commission's final affirmative determination of material injury and to remand the case to the Commission. *See Gerald Metals, Inc.* v. *United States,* 132 F.3d 716 (Fed. Cir. 1997). On remand, the Commission determined that the U.S. industry was not being materially injured, and was not threatened with material injury, by reason of imports of the subject merchandise. The CIT affirmed the Commission's remand determination on October 20, 1998. *See Gerald Metals, Inc.* v. *United States,* Court No. 95–06–00782, Slip Op. 98–148 (CIT).

Suspension of Liquidation

In its decision in *Timken,* the Federal Circuit held that the Department must publish notice of a decision of the CIT or the Federal Circuit which is not ''in harmony'' with the Department's or the Commission's determination. Publication of this notice fulfills that obligation. The Federal Circuit also held that the Department must suspend liquidation of the subject merchandise until there is a ''conclusive'' decision in the case. Therefore, pursuant to *Timken,* the Department must suspend liquidation pending the expiration of the period to appeal the CIT's October 20, 1998 decision or, if that decision is appealed, pending a final decision by the Federal Circuit. However, because entries of pure magnesium and alloy magnesium from Ukraine already are being suspended pursuant to the antidumping duty orders in effect, the Department need not order the Customs Service to suspend liquidation. Furthermore, consistent with *Timken,* the Department will revoke the antidumping duty order covering the subject merchandise in the event that the CIT's ruling is not appealed or the Federal Circuit issues a final decision affirming the CIT's ruling.

Dated: December 1, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–32722 Filed 12–8–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–816]

Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On June 5, 1998, the Department of Commerce (''the Department'') published the preliminary results of the administrative review of the antidumping duty order on certain stainless steel butt-weld pipe fittings from Taiwan. This review covers one manufacturer and exporter of the subject merchandise. The period of review (''POR'') is June 1, 1996 through May 31, 1997. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: December 9, 1998.

FOR FURTHER INFORMATION CONTACT: Becky Hagen or Bob Bolling, AD/CVD Enforcement Group III—Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Room 7866, Washington, DC 20230; telephone (202) 482–1102 or (202) 482–3434, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

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

Background

On June 5, 1998, the Department published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on certain stainless steel butt-weld pipe fittings from Taiwan (63 FR 30710). On September 30, 1998, the Department extended the time limit for the final results to December 2, 1998, in accordance with the Act. *See Butt-Weld Pipe Fittings from Taiwan; Extension of Time Limits for Antidumping Duty Administrative Review* (63 FR 54108, October 8, 1998). The Department has now completed this administrative review in accordance with section 751 of the Act.

Scope of the Review

The products subject to this review are certain stainless steel butt-weld pipe fittings, whether finished or unfinished, under 14 inches inside diameter.

Certain stainless steel butt-weld pipe fittings (''pipe fittings'') are used to connect pipe sections in piping systems where conditions require welded connections. The subject merchandise is used where one or more of the following conditions is a factor in designing the piping system: (1) Corrosion of the piping system will occur if material other than stainless steel is used; (2) contamination of the material in the system by the system itself must be prevented; (3) high temperatures are present; (4) extreme low temperatures are present; (5) high pressures are contained within the system.

Pipe fittings come in a variety of shapes, with the following five shapes the most basic: ''elbows,'' ''tees,'' ''reducers,'' ''stub ends,'' and ''caps.'' The edges of finished pipe fittings are beveled. Threaded, grooved, and bolted

fittings are excluded from this review. The pipe fittings subject to this review are classifiable under subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States (''HTSUS''). These HTSUS item numbers are provided for convenience and customs purposes. The written descriptions remain dispositive.

Pipe fittings manufactured to American Society of Testing and Materials specification A774 are included in the scope of this order.

The POR is June 1, 1996 through May 31, 1997. This review covers sales of certain stainless steel butt-weld pipe fittings from Taiwan by Ta Chen Stainless Pipe Co., Ltd. (''Ta Chen'').

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from Ta Chen, exporters of the subject merchandise (''respondent'') and rebuttal comments from petitioner, Flowline Division of Markovitz Enterprises Inc.

Comments

Comment 1: Ta Chen argues that the Department made a clerical programming error in the margin calculation program by setting cost of manufacture (''TOTCOMCV'') equal to Ta Chen's total constructed value (''TOTCV''). Respondent argues that Ta Chen's cost of manufacture (''TOTCOMCV'') should be set equal to Ta Chen's total cost of manufacture (''TOTCOM''). The petitioner did not comment on this argument.

Department's Position: We agree with respondent and have corrected this error for the final results. The final margin program now sets the cost of manufacture equal to total cost of manufacture. For a more specific discussion of the change that the Department has made in its final margin program, please see the Department's analysis memorandum and final antidumping duty margin calculation program.

Comment 2: Ta Chen argues that inventory carrying costs associated with time on the water should not be included in U.S. indirect selling expenses deducted from U.S. price. It asserts that only indirect selling expenses associated with economic activity occurring in the United States should be deducted from U.S. price pursuant to determining net price. Respondent states that the preliminary results added the ocean time in transit between Ta Chen's plant in Tainan, Taiwan and Ta Chen International's (''TCI'') warehouses in Long Beach, California to Ta Chen's reported inventory carrying costs. It argues that that inventory carrying cost is not associated with economic activity in the United States, and therefore should not be included in U.S. indirect selling expenses.

Petitioner argues that, while it is true that the amendments to the dumping statute now only recognize those indirect selling expenses associated with economic activity occurring in the United States, it is not true that ''time on the water'' necessarily took place outside the United States. Additionally, petitioner argues, the Department's Antidumping Manual (''AD Manual'') notes that foreign inventory carrying costs do not form part of the constructed export price (''CEP'') deduction, and the AD Manual makes no mention of the costs incurred once a product leaves the foreign country. Petitioner asserts that Ta Chen revised its reported inventory carrying costs at verification to include ''time on the water'' in the calculations, which was accepted by the Department. They argue that the Department's inclusion of ''time on the water'' is consistent with its past practice, and does not constitute an unintentional error.

Department's Position: We agree with Ta Chen that the inventory carrying costs incurred for the time on the water between Taiwan and the United States should not be deducted from the price used to calculate CEP. The Department has addressed this issue in the past in *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty administrative Reviews,* 63 FR 33320, 33344 (June 18, 1998) and *Color Picture Tubes From Japan; Final Results of Antidumping Duty Administrative Review,* 62 FR 34201, 34206 (June 25, 1997). In both instances, the Department stated that it is clear from the Statement of Administrative Action (''SAA'') that under section 772(d) of the Act we should deduct from CEP only those expenses associated with commercial activity in the United States which relate to the resale to an unaffiliated purchaser. *In Color Picture Tubes From Japan,* we further explained that the SAA indicates CEP ''is now calculated to be, as closely as possible, a price corresponding to a price between non-affiliated exporters and importers.'' 62 FR at 34207 (quoting SAA at 823). Section 351.402(b) of the Department's new regulations [1] codifies this principle, stating that we will make adjustments under section 772(d) for expenses associated with commercial activity in the United States, no matter where it was incurred. Therefore, consistent with section 772(d) and the SAA, we deduct only those expenses representing activities undertaken to make the sale to the unaffiliated customer in the United States. We ordinarily do not deduct indirect expenses incurred in selling to the affiliated U.S. importer. *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part,* 62 FR 11825, 11834 (March 13, 1997); *Gray Portland Cement and Clinker From Mexico; Final Results of Antidumping Duty Administrative Review,* 62 FR 17148, 17168 (April 9, 1997).

We do not consider the portion of Ta Chen's inventory carrying costs during the period of transit to be associated with commercial activity in the United States. These expenses were incurred from the date of exportation to the date the affiliated importer received the subject merchandise in the United States and, therefore, relate to the sale to Ta Chen's U.S. affiliate and not to the sale to the unaffiliated customer. *See Certain Stainless Wire Rods From France: Amended Final Results of Antidumping Duty Administrative Review (Steel Wire Rods),* 62 FR 25915, 25916 (May 12, 1997). Accordingly, for these final results we have not deducted such costs from the CEP.

Comment 3: Ta Chen argues that the CEP profit calculation erroneously imputes a profit on TCI's direct expenses and commission payments in the United States. It states that the CEP profit calculation should only be an imputed profit on Ta Chen's indirect selling expenses occurring in the United States, not on U.S. direct selling expenses and commissions.

Petitioner argues that it is the Department's policy to use total U.S. selling expenses, including direct selling expenses and commission, in the derivation of CEP profit.

[1] Although this review was conducted under the Department's old regulations at 19 CFR part 353, section 351.701 of the new regulations states that the old regulations will apply to reviews requested before the new regulations take effect to the extent the old regulations ''were not invalidated by the URAA.'' Here, the old regulations governing exporter sales price deductions are not in conformity with the requirements of the URAA, therefore the new regulations at 351.402(b) apply to this CEP deduction issue.

Department's Position: The Department agrees with petitioner. Ta Chen argues that the Department should not impute a CEP profit on Ta Chen's U.S. direct selling expenses and commissions. Instead, Ta Chen asserts that the Department should only impute CEP profit on Ta Chen's indirect selling expenses occurring in the United States. Respondent's proposed methodology is directly contrary to the plain language of Section 772(d)(3) of the Act. Section 772(d)(3) provides that the Department shall reduce the starting price used to establish CEP by the profit allocated to the expenses described in section 772(d)(1)&(2). Section 772(d)(1) lists the following expenses:

(A) Commissions for selling the subject merchandise in the United States;

(B) Expenses that result from, and bear a direct relationship to, the sale, such as credit expenses, guarantees and warranties;

(C) Any selling expenses that the seller pays on behalf of the purchaser; and

(D) Any selling expenses not deducted under * * * (A), (B), or (C) [above].

Further, for purposes of calculating the applicable percentage, section 772(f)(2)(B) defines total U.S. expenses as those expenses deducted under section 772(d)(1)&(2). Therefore, contrary to Ta Chen's argument, the plain language of the statute directs the Department to deduct from CEP the profit allocated to all U.S. expenses, including U.S. direct selling expenses and commissions. Thus, the Department has not changed the CEP profit methodology used in the *Preliminary Results.*

Final Results of Review

As a result of this review, we determine that the following margin exists for the period June 1, 1996 through May 31, 1997:

Producer/manufacturer/exporter	Weighted-average margin (percent)
Ta Chen	0.34

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department shall issue appraisement instructions directly to the Customs Service. For assessment purposes, we have calculated importer-specific duty assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales during the POR to the total entered value of sales examined during the POR. As a result of this review, we have determined that the importer-specific duty assessment rate is necessary.

Furthermore, the following deposit requirements shall be effective upon publication of this notice of final results of review for all shipments of certain stainless steel butt-weld pipe fittings from Taiwan, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act: (1) No cash deposit will be required for the reviewed company because its rate, stated above, is *de minimis;* (2) for previously investigated or reviewed companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original LTFV investigations, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these reviews, the cash deposit rate for this case will continue to be 51.03 percent, the ''All Others'' rate made effective by the LTFV investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

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

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

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 1677(f)(i)(1)).

Dated: December 2, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–32728 Filed 12–8–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–803]

Titanium Sponge From the Russian Federation: Rescission of Antidumping Duty Administrative Review

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

ACTION: Notice of rescission of antidumping duty administrative review.

SUMMARY: On September 29, 1998, the Department of Commerce (the Department) initiated an administrative review of the antidumping finding on titanium sponge from the Russian Federation (Russia) for TMC Trading International, Ltd. (TMC), an exporter/reseller of subject merchandise. This review was requested by TMC and covers the period April 1, 1997, through March 31, 1998. The Department is rescinding the review after receiving a withdrawal of its request for review from TMC.

EFFECTIVE DATE: December 9, 1998.

FOR FURTHER INFORMATION CONTACT: Mark Manning or Wendy Frankel, Office of AD/CVD Enforcement, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–3936 and 482–5849, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's regulations refer to the regulations codified at 19 CFR Part 351 (1998).

Background

On August 28, 1998, TMC requested that the Department conduct an administrative review of titanium sponge from Russia for the period April

1, 1997 through March 31, 1998. No other interested party requested that the Department conduct an administrative review.

On September 29, 1998, the Department published in the **Federal Register** (63 FR 51893) a notice of initiation of administrative review with respect to TMC, an exporter/reseller of subject merchandise. On November 12, 1998, TMC filed a letter with the Department withdrawing its request that the Department conduct an administrative review. This withdrawal complies with section 351.213(d) of the Department's regulations, which grants parties 90 days from the publication of the notice of initiation of review to withdraw a request for review. *See* 19 CFR 351.213(d). Therefore, the Department is rescinding this administrative review.

This notice is in accordance with section 751 of the Act and section 351.213(d) of the Department's regulations.

Dated: December 1, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–32724 Filed 12–8–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–834–802]

Agreement Suspending the Antidumping Investigation on Uranium From Kazakhstan

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

ACTION: Notice of Amendment to the Agreement Between the United States Department of Commerce and the Republic of Kazakhstan Suspending the Antidumping Investigation on Uranium from Kazakhstan.

SUMMARY: The Department of Commerce (''Department'') and the Republic of Kazakhstan (''Kazakhstan'') have signed an Amendment (''Amendment'') to the Agreement Suspending the Antidumping Investigation on Uranium from Kazakhstan (''Agreement'').

EFFECTIVE DATE: October 7, 1998.

FOR FURTHER INFORMATION CONTACT: James C. Doyle or Juanita H. Chen, Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–0159 or (202) 482–0409, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 16, 1992, the Department and Kazakhstan signed the Agreement and, on October 20, 1992, the Agreement was published in the **Federal Register** (57 FR 49220, 49222). On August 11, 1998, the Department and Kazakhstan initialed an amendment to permit entry of certain uranium from Kazakhstan under the re-export provision of the Agreement (''Initialed Amendment''). The Department subsequently released the Initialed Amendment to interested parties for comment. After careful consideration by the Department of the comments submitted, and further consultations between the parties, the Department and Kazakhstan signed a final Amendment on September 29, 1998. The text of said final Amendment follows this notice. On October 2, 1998, to satisfy a condition subsequent, in compliance with the terms of the Amendment, Kazakhstan submitted a numerical chart to the record showing that the entire volume of Kazakhstan's imported enriched uranium and uranium received in consideration for Kazakhstan's uranium, both in terms of separative work units (SWU) and pounds U3O8 equivalent, would be re-exported.

Dated: November 27, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

Amendment to the Agreement Between the United States Department of Commerce and the Republic of Kazakhstan Suspending the Antidumping Investigation on Uranium From Kazakhstan

The United States Department of Commerce (''the Department'') and the Government of the Republic of Kazakhstan (''Kazakhstan'') hereby amend their Agreement Suspending the Antidumping Investigation on Uranium from Kazakhstan, signed October 16, 1992 (''the Agreement''), to permit entry, under Section IV.H of the Agreement, of uranium from Kazakhstan, identified in submissions to the Department dated December 30, 1997, January 22, 1998, February 2, 1998, March 3, 1998, April 30, 1998, and September 1, 1998. The Department and Kazakhstan acknowledge that they are also negotiating an amendment to this Agreement. As part of these negotiations, the parties shall seek to establish pre-shipment notification and approval procedures for shipments under Section IV.H.

Section IV.H of the Agreement is hereby amended by adding the following sentence:

The uranium identified as Kazakhstani uranium in submissions to the Department dated December 30, 1997, January 22, 1998, February 2, 1998, March 3, 1998, April 30, 1998, and September 1, 1998, may enter the United States pursuant to this provision, consistent with the transaction described in such submissions, notwithstanding whether such transaction involves a sale in the United States. In addition, the Government of Kazakhstan must provide, on the record, a full description of the disposition of all uranium to be delivered pursuant to this Amendment, including all relevant contracts. All documents submitted in connection with such transactions are subject to verification. This Amendment will become effective upon the filing of such submission. All other requirements of this Section apply in full.

Signed on this 29th day of September, 1998.

For the Government of Kazakhstan:

Bolat Nurgaliev,

Ambassador to the United States, Republic of Kazakhstan.

For the United States Department of Commerce:

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–32723 Filed 12–8–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–063]

Certain Iron-metal Castings From India: Amended Final Results of Countervailing Duty Administrative Review in Accordance With Decision Upon Remand

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

ACTION: Notice of amendment to final results of countervailing duty administrative review in accordance with decision upon remand.

SUMMARY: On September 29, 1998, in *Creswell Trading Co.* v. *United States*, Slip Op. No 98–139., the United States Court of International Trade (CIT) affirmed the Department of Commerce's (the Department's) redetermination on remand regarding the administrative review covering the period January 1, 1985, through December 31, 1985. In accordance with the CIT's instructions, the Department has recalculated the countervailing duty rates. The final countervailing duty rates for this review period are listed below in the *Results of Remand* section.

EFFECTIVE DATE: December 9, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Copyak or Richard Herring, Office of AD/CVD Enforcement VI, Import Administration, International

Trade Administration, U.S. Department of Commerce, 14th & Constitution Avenue, N.W., Room 4012, Washington, D.C. 20230; telephone (202) 482–2786.

SUPPLEMENTARY INFORMATION: On December 10, 1990, the Department published in the **Federal Register** (55 FR 50747) the final results of its administrative review of the countervailing duty order on certain iron-metal castings from India for the period January 1, 1985, through December 1, 1985. Subsequently, respondents challenged the Department's final results before the Court of International Trade (CIT) regarding the Department's methodology for calculating program rates for the subsidies provided under India's International Price Reimbursement Scheme (IPRS).

The IPRS is a program through which the Government of India (''GOI'') provided rebates to castings exporters that purchased domestically-produced pig iron at prices set by the GOI. According to the GOI, the amounts of these rebates were calculated to equal the differences between the higher prices actually paid for domestic pig iron and alternative prices of pig iron available from sources outside of India. In the 1985 administrative review of the countervailing duty order, the Department determined that the IPRS program was countervailable in its entirety because the rebates provided preferential prices for exporters which were not available to domestic purchasers of pig iron. Indian exporters appealed to the CIT, claiming that the Department should have examined whether the IPRS program met the criteria for non-countervailability under Item (d) of the Illustrative List of Export Subsidies. The CIT agreed and remanded the case to the Department. *Creswell Trading Co.* v. *United States*, 783 F. Supp. 1418 (CIT 1992) (''*Creswell I*''). The Department again determined that the program was countervailable in its entirety because the Indian exporters did not provide sufficient information to conduct an Item (d) analysis. The CIT upheld the Department's position on the first remand of the 1985 review. *Creswell Trading Co.* v. *United States*, 797 F. Supp. 1038 (CIT 1992) (''*Creswell II*'').

The Indian exporters appealed *Creswell II* to U.S. Court of Appeals for the Federal Circuit (Federal Circuit). On February 2, 1994, in *Creswell Trading Co.*, v. *United States*, 15 F.3d 1054 (Fed. Cir. 1994) (''*Creswell III*''), the Federal Circuit held that the Indian exporters had met their burden of producing evidence regarding prices for pig iron on the world market. Consequently, the Federal Circuit instructed the CIT to remand the final results of the 1985 administrative review to the Department with instructions to conduct an Item (d) analysis of the IPRS program taking into consideration pig iron pricing information placed on the record by the Indian exporters. On April 25, 1994, pursuant to the opinion of the Federal Circuit in *Creswell III*, the CIT remanded the final results of the 1985 administrative review to the Department for the second time.

In the second remand, the Department found that the IPRS program fit within the general concept of the Item (d) exception in that the program attempted to rebate to Indian casting exporters the difference between the higher cost of Indian pig iron and the lower cost of foreign-sourced pig iron. The Department interpreted Item (d) to permit a comparison of delivered prices in order to give effect to the Item (d) language which required an analysis of ''such terms and conditions'' that made foreign-sourced pig iron ''commercially available on world markets to [Indian] exporters.'' The Department determined that, because the payments to Indian exporters under the IPRS program enabled castings exporters to obtain pig iron on terms ''more favorable than those available on world markets,'' the payments were excessive. Accordingly, the Department determined that the payments were countervailable to the extent they covered scrap used in the production of castings and to the extent ocean freight was excluded from the international benchmark price. In *Creswell Trading Co.* v. *United States*, 936 F. Supp. 1072 (CIT 1996) (''*Creswell IV*''), the CIT affirmed the Department's determination that the IPRS program fit within the ambit of the Item (d) exception. It also affirmed the Department's determination to countervail IPRS payments for scrap, but disapproved of the Department's determination that an Item (d) analysis requires comparing delivered prices to delivered prices, inclusive of ocean freight. On September 30, 1996, the Department submitted its third redetermination on remand, in which it excluded the cost of ocean freight from the international benchmark price for pig iron, and the CIT affirmed it in *Creswell Trading Co.* v. *United States*, 964 F. Supp. 409 (CIT 1997) (''*Creswell V*''). The Department then appealed *Creswell V* with respect to the exclusion of ocean freight from the world market price of pig iron. The Federal Circuit reversed, in part, the CIT's opinion in *Creswell V*, stating in relevant part that the CIT ''erred in holding that the oceanic shipping costs did not constitute countervailable subsidies under Item (d).'' *Creswell Trading Co.* v. *United States*, 141 F.3rd 1471, 1477 (1998) (''*Creswell VI*''). The Federal Circuit went on to state that:

> Item (d) specifies that delivery of products by a foreign government to exporters on terms or conditions more favorable than are ''commercially available'' to those exporters on the world markets constitutes a countervailable subsidy. Item (d) thus recognizes that foreign governments may subsidize their domestic industries to allow them to compete effectively on the world market as long as the extent of the subsidization is not more favorable to their exporters than if those exporters had to participate in the world market without assistance. If the amount of the subsidization exceeds this point, it is excessive and this excessive amount is countervailable under Item (d). Accordingly, Item (d) mandates a comparison between the terms and conditions under which product was supplied to exporters by their governments and the terms and conditions to which those exporters would have been subject had they instead participated in the world market.

Id. Further, the Federal Circuit explained that:

> A castings manufacturer procuring pig iron on the world market would have to pay the FOB price for the pig iron itself, plus the cost of shipping that iron to India. Accordingly, the world market price must include the cost of shipping. To the extent that the Indian government's world market price did not include oceanic shipping costs, its world market price was artificially low and its rebate artificially high by this amount. The price of pig iron that is not delivered to India cannot be fairly compared with the price of pig iron that is delivered. Thus, because of the omission of oceanic shipping costs from the calculation of the world market price, the IPRS program has in effect provided pig iron to India's castings manufacturers on terms and conditions more favorable than had those manufacturers actually procured pig iron on the world market.

Id. 141 F.3rd at 1478.

Results of Remand

In accordance with the CIT's order dated June 24, 1998, the Department prepared final results of redetermination on remand with respect to the final results of the 1985 countervailing duty administrative review of iron-metal castings from India. Pursuant to the CIT's remand instructions, which were issued as a result of *Creswell VI*, the Department, in recalculating the countervailable subsidy conferred under India's IPRS program, included ocean freight in the international benchmark price for pig iron. The Department has recalculated the subsidies provided under the IPRS program consistent with

the opinion of the Federal Circuit in *Creswell VI.*

On September 29, 1998, the CIT affirmed the Department's redetermination. *Creswell Trading Co.* v. *United States*, Slip Op. No. 98–139. No comments were received by the CIT contesting the Department's redetermination. Therefore, in accordance with the results of remand affirmed by the CIT, we are amending the final results of administrative review. The final countervailing duty rates for the 1985 period of review are the following:

Carnation Enterprise Pvt. Ltd.—13.83%
Crescent Foundry Co. Pvt. Ltd.—30.09%
Govind Steel—51.39%
Kejriwal Iron & Steel Works—14.09%
R.B. Agarwalla & Co.—7.96%
R.S.I.—8.22%
Serampore Industries Pvt. Ltd.—22.09%
Uma Iron & Steel Co.—15.64%
Kajaria Castings Ltd.—44.84%
Super Castings Ltd.—29.40%
Country-wide Rate—22.09%

The Department will instruct the Customs Service to assess countervailing duties on all appropriate entries. The Department will issue liquidation instructions directly to the Customs Service. The above rate will not affect the cash deposit requirements currently in effect, which will continue to be based on the rates found to exist in the most recently completed review.

This amendment to the final results of countervailing duty administrative review notice is in accordance with section 751(a)(1) of the Tariff Act, as amended, (19 U.S.C. 1675(a)(1)) and § 355.22 of the Department's regulations (19 CFR 355.22 (1989)).

Dated: December 1, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–32721 Filed 12–8–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Government Owned Inventions Available for Licensing

AGENCY: National Institute of Standards and Technology Commerce.

ACTION: Notice of government owned inventions available for licensing.

SUMMARY: The inventions listed below are owned in while or in part by the U.S. Government, as represented by the Department of Commerce. The Department of Commerce's ownership interest in the invention is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR Part 404 to achieve expeditious commercialization of results of Federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on this invention may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, 100 Bureau Drive, Stop 2200, Gaithersburg, MD 20899–2200; Fax 301–869–2751. Any request for information should include the NIST Docket No. and Title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement (''CRADA'') with the licensee to perform further research on the invention for purposes of commercialization. The inventions available for licensing are:

NIST Docket Number: 96–002US.

Title: True Time Delay Generation Utilizing Broadband Light Source With Fiber Chirp Grating Array and Acousto-Optic Beam Steering And 2–D Architecture.

Abstract: System and method for rapidly reconfigurable two-dimensional true time delay generation for phased array antennas is described. The system utilizes a broadband light source, an array of fiber chirp gratings in a single fiber, and an acousto-optic spectrometer to generate a time-delayed linear grating. The grating is subsequently rotated to the desired angle utilizing an acousto-optic device having no moving parts.

NIST Docket Number: 97–049US.

Title: Method And Apparatus For Compression Of A Polarized Gas.

Abstract: A polarized 3He gas source has been developed which is capable of producing one standard liter of 10–15% polarized 3He gas in 2–3 hours. The gas source comprises an apparatus which compresses 3He gas produced by metastability-exchange optical pumping (at a pressure of a few mbar) to an output pressure of about 1 bar with up to 70% preservation of the polarization. By cooling the storage cell to liquid nitrogen temperature during filling by the compressor, a final room temperature pressure of 4 bar has been obtained. The invention is a compact and relatively inexpensive device which is the result of extensive modifications to a standard diaphragm pump and appears to be ideally suited for use in a clinical setting where space is at a premium. The use of the polarized gas allows MRI studies of lungs and other air spaces, using conventional MRI systems or much smaller magnetic field levels.

Robert E. Hebner,

Acting Deputy Director.

[FR Doc. 98–32691 Filed 12–8–98; 8:45 am]

BILLING CODE 3510–13–M

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Request for three-year extension of OMB control #3038–0013—Exemptions from Speculative Limits.

SUMMARY: The Commodity Futures Trading Commission has submitted information collection 3038–0013, Exemptions from Speculative Limits to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. The information collected pursuant to this rule is in the public interest and is necessary for market surveillance.

ADDRESSES: Persons wishing to comment on this information collection should contact the Desk Officer, CFTC, Office of Management and Budget, Room 3228, NEOB, Washington, D.C. 20502, (202) 395–3897. Copies of the submission are available from the CFTC Clearance Officer, (202) 418–5160.

Title: Exemptions from Speculative Limits.

Control Number: 3038–0013.

Action: Extension.

Respondents: Businesses (excluding small business).

Estimated Annual Burden: 36 total hours.

Respondents	Regulation (17 CFR)	Estimated No. of respondents	Annual responses	Est. Avg. hours per response
Businesses	1.47 & 1.48 and Part 150.	12	12	36

Issued in Washington, DC, on December 3, 1998.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–32672 Filed 12–10–98; 8:45 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

All-Terrain Vehicles; Commission Resolution

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Consumer Product Safety Commission (''Commission'') hereby announces its issuance of a Resolution commending certain members of the all-terrain vehicle (''ATV'') industry (Yamaha Motor Corp., U.S.A., Kawasaki Motors Corp., U.S.A., American Suzuki Motor Corp., Polaris Industries Inc., and Arctic Cat Inc.) for their ATV action plans consisting of new and continuing safety-related actions regarding these products. A notice, approved by the Commission and published in the **Federal Register** on September 9, 1998, included detailed historical and current information regarding the ATV matter and invited public comment on issuance of the Resolution. (63 FR 48199) After consideration of such public comments, the Commission has voted to approve the following Resolution: [1]

Resolution of the United States Consumer Product Safety Comission

The United States Consumer Product Safety Commission (the ''Commission''), by vote on December 1, 1998, RESOLVES THAT:

Whereas, on April 28, 1988, the United States of America entered into Consent Decrees, filed in U.S. District Court, with American Honda Motor Co., Inc., Yamaha Motor Corp., U.S.A., Kawasaki Motors Corp., U.S.A., U.S. Suzuki Motor Corp. (nka American Suzuki Motor Corp.), and Polaris Industries, L.P. (nka Polaris Industries Inc.), which expired on April 28, 1998 (the ''Consent Decrees'');

Whereas, on September 27, 1996, the Commission entered into an Agreement and Action Plan with Arctic Cat Inc., which expired on April 28, 1998 (the ''Arctic Cat Agreement''); and

Whereas, the Consent Decrees and Arctic Cat Agreement required the signatory companies to implement various measures designed to enhance consumer safety with respect to all-terrain vehicles (''ATVs''); and

Whereas, on April 24, 1998, the Commission released the results and analysis of its 1997 ATV injury and exposure surveys, and those surveys indicate that, among other things, (i) risk of injury is 2.5 times higher when children younger than 16 drive ATVs than for drivers 16 to 34 years of age and 4.5 times higher for such children than for drivers 35 to 54 years of age; and (ii) risk declines with experience, for which the Commission believes formal training is a partial surrogate; and

Whereas, the Commission remains concerned about the current level of deaths and injuries associated with ATVs, especially those involving children younger than 16, and believes enhanced safety efforts may achieve a further reduction in such deaths and injuries; and

Whereas, the staff of the Commission and Yamaha Motor Corp., U.S.A., Kawasaki Motors Corp., U.S.A., American Suzuki Motor Corp., Polaris Industries Inc., and Arctic Cat Inc. (collectively, the ''Participating Companies'') have actively consulted on actions that the companies will voluntarily undertake (the ''ATV Action Plan''); and

Whereas, the ATV Action Plan is set forth in separate documents that the Participating Companies have submitted to the Commission's staff; and

Whereas, a description of the ATV Action Plan, together with a draft copy of this Resolution and other materials, was published in the **Federal Register** on September 9, 1998, and the public was invited to comment on this Resolution and the Commission has considered such comments in adopting this Resolution; and

Whereas, pursuant to the ATV Action Plan, the Participating Companies will (i) promote training, including through enhanced cash incentives to first-time ATV purchasers (or, in the case of Polaris, through requiring that previously untrained purchasers take training in order to receive a warranty on the vehicle), (ii) implement a multi-million dollar, multi-year information and education safety campaign emphasizing, among other things, the risks created when children younger than 16 operate or ride on adult-sized ATVs, (iii) not market, sell or offer to sell adult-size ATVs to or for use by children younger than 16, (iv) not market or sell three-wheel ATVs, (v) provide safety information on and with ATVs, including giving an ATV Safety Alert to each purchaser, (vi) retain the services of an independent organization to continue the undercover monitoring of the same number of randomly selected dealers as was done under previous monitoring programs, (vii) continue or undertake various other safety measures, and (viii) notify the Commission at least 60 days in advance of any material changes to the ATV Action Plan (Arctic Cat Inc. has agreed to continue with its actions under the ATV Action Plan for five years); and

Whereas, notwithstanding implementation of the ATV Action Plan, the Commission reserves all its statutory enforcement, regulatory and oversight powers with respect to ATVs.

Now, therefore:

1. The Commission commends the Participating Companies for the ATV Action Plan, which the Commission believes will provide safety benefits to consumers.

2. The Commission will actively monitor the ATV Action Plan by, among other things, increasing the undercover inspections it conducts of dealerships to ensure compliance with age recommendations; increasing its inspections to ensure proper use of labels and hangtags; and collecting and assessing information regarding the effectiveness of the new training incentives. Other activities are set forth in the **Federal Register** notice announcing this Resolution. The

[1] Chairman Ann Brown voted to approve the Resolution. Commissioner Thomas H. Moore voted to approve the Resolution and issued a statement regarding his vote. Commissioner Mary Sheila Gall abstained from voting on the Resolution and issued a statement explaining the basis for her abstention. The ballot vote sheets and the statements of Commissioners Moore and Gall are available to the public through the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

Commission will take appropriate action based on the results of this monitoring activity. The Commission also will continue to track the death and injury rate associated with ATVs and reserves its authority to take action based on this data.

FOR FURTHER INFORMATION: For further information about the Resolution, call or write Leonard H. Goldstein, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207; (301) 504–0980, Ext. 2202.

Dated: December 4, 1998.

Todd A. Stevenson,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 98–32676 Filed 12–8–98; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Space Debris Meeting with NASA in support of the HQ USAF Scientific Advisory Board will meet at NASA Headquarters, Washington, DC on January 6, 1999 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to discuss Volume 3 of the Space Debris Report and get approval for release.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 98–32610 Filed 12–8–98; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 8, 1999.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address Pat__Sherrill@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 3, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: New.

Title: Application for Bilingual Education: Field-Initiated Research Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't; SEAs or LEAs.

Reporting and Recordkeeping Burden:

Responses: 20.

Burden Hours: 2,900.

Abstract: The Department of Education needs and uses this information to award grants for Field-Initiated Research in bilingual education. The respondents are institutions of higher education (IHEs), nonprofit organizations (NPOs), and State and local educational agencies.

[FR Doc. 98–32611 Filed 12–8–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Renewal of the Advisory Committee on Appliance Energy Efficiency Standards

AGENCY: Department of Energy.

ACTION: Notice of Renewal.

Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), and title 41, Code of Federal Regulations (CFR), Subpart 101–6, Final Rule on Federal Advisory Committee Management, I hereby certify the Advisory Committee on Appliance Energy Efficiency Standards is necessary and in the public interest in connection with the performance of duties imposed on the Department of Energy by law. This notice of intent follows consultation with the Committee Management Secretariat of the General Services Administration, pursuant to 41 CFR Subpart 101–6.10.

The purpose of the Committee is to provide the Secretary of Energy with advice, information, and recommendations on the appliance energy efficiency standards rulemaking process. The Committee will provide an organized forum for a diverse set of interested stakeholders and technically adept individuals to conduct an in-depth assessment of the Appliance Standards rulemaking process.

Committee members will be chosen to ensure an appropriately balanced membership to bring into account a diversity of viewpoints, including representatives from manufacturer trade associations, energy conservation advocates, utilities, state energy offices, and others who may significantly contribute to the deliberations of the committee. All meetings of this Committee will be noticed ahead of time in the **Federal Register**

Further information regarding this Advisory Committee may be obtained from Michael J. McCabe, Director Office of Codes and Standards, EE–43, 1000 Independence Avenue, SW, Washington, DC 20585–0121 (telephone: 202–586–9127)

Issued in Washington, DC on December 2, 1998.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 98–32671 Filed 12–8–98; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–160–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1998.

Take notice that on November 30, 1998, ANR Pipeline Company (ANR) tendered for filing, as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets proposed to become effective December 1, 1998:

Thirty-Fourth Revised Sheet No. 8
Thirty-Fourth Revised Sheet No. 9
Thirty-Third Revised Sheet No. 13
Fortieth Revised Sheet No. 18

ANR states that the above-referenced tariff sheets are being filed to implement recovery of $2,571,704 of above-market costs that are associated with its obligations to Dakota Gasification Company (Dakota). ANR proposes a reservation surcharge applicable to its Part 284 firm transportation customers to collect ninety percent (90%) of the Dakota costs, and an adjustment to the maximum base tariff rates of Rate Schedule ITS and overrun rates applicable to Rate Schedule FTS–2, so as to recover the remaining ten percent (10%). ANR advises that the proposed recovery amount is virtually identical to the previous above market cost filing of $2,571,558, and therefore the resulting rates reflected on the above tariff sheets have not changed.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 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. 98–32695 Filed 12–8–98; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–3–32–000]

Colorado Interstate Gas Company; Notice of GRI Filing

December 3, 1998.

Take notice on November 30, 1998, Colorado Interstate Gas Company (CIG), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sub Twenty-Fifth Revised Sheet No. 11, with an effective date of January 1, 1999.

CIG states the purpose of this filing is to permit CIG to correct its Gas Research Institute (GRI) filing made November 16, 1998.

CIG states that copies of the filing were served upon the company's jurisdictional firm customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 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. 98–32705 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–4–32–000]

Colorado Interstate Gas Company; Notice of Tariff Filing

December 3, 1998.

Take notice that on November 30, 1998, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, Tenth Revised Sheet No. 11A, reflecting an increase in its fuel reimbursement percentage for Lost, Unaccounted-For and Other Fuel Gas from 0.98% to 1.17% effective January 1, 1999.

CIG states that copies of the filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 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. 98–32707 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–169–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1998.

Take notice that on December 1, 1998, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective January 1, 1999:

Thirty-second Revised Sheet No. 25
Thirty-second Revised Sheet No. 26
Thirty-second Revised Sheet No. 27
Thirteenth Revised Sheet No. 30A

Columbia states that this filing is being submitted pursuant to Stipulation I, Article I, Secton E, True-up Mechanism of the Settlement (Settlement) in Docket No. RP95–408 et al., approved by the Commission on April 17, 1997 (79 FERC ¶61,044 (1997)). Under the approved section of the Settlement, Columbia is required to true-up its collections pursuant to the Settlement Component for 12-month periods commencing November 1, 1996 and ending October 31, 2004. The second 12-month period (Period II) ended October 31, 1998. Columbia is making this true-up filing in compliance with the Settlement to return a net over-recovered amount of $1,190,111 for Period II, which includes interest and the true-up of the Period I Settlement Component adjustment, through an adjustment to the Settlement Component of the base rates for the period January 1, 1999 through October 31, 1999.

Columbia states further that copies of this filing have been mailed to all of its customers and affected state regulatory commissions.

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 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. 98–32700 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–719–000]

Commodore Electric; Notice of Filing

December 3, 1998.

Take notice that on November 25, 1998, Commodore Gas Company d/b/a Commodore Electric (Commodore), petitioned the Commission for acceptance of Commodore Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Commodore intends to engage in wholesale electric power and energy purchases and sales as a marketer. Commodore is not in the business of generating or transmitting electric power. Commodore is a wholly-owned division of Commodore Gas Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before December 15, 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. 98–32612 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–100–001]

Crossroads Pipeline Company; Notice of Compliance Filing

December 3, 1998.

Take notice that on December 1, 1998, Crossroads Pipeline Company (Crossroads) tendered for a filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to be effective November 2, 1998:

Fifth Revised Sheet No. 39
First Revised Sheet No. 39A
Second Revised Sheet No. 40
Sixth Revised Sheet No. 76

Crossroads states that the purpose of this filing is to comply with a letter order issued in Docket No. RP99–100–000 on November 13, 1998.

Crossroads states that copies of the filing have been mailed to all affected customers and applicable state regulatory agencies and all parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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. 98–32693 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP98–155–004 and TM98–4–4–000]

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

December 3, 1998.

Take notice that on December 1, 1998, Granite State Gas Transmission, Inc. (Granite State) tendered for filing as part of its FERC Gas Tariff, Third Revised

Volume No. 1, the revised tariff sheet listed below for effectiveness on July 1, 1998:

Third Substitute First Revised Sheet No. 334.

Granite State states that its tariff filing is submitted to replace an erroneous tariff sheet that was filed on July 8, 1998 and accepted and made effective on July 1, 1998 in a Letter Order issued August 8, 1998.

According to Granite State, Sheet No. 334 includes part of its Power Cost Adjustment (PCA) surcharge provision by which Granite State is reimbursed for certain electric power costs for which it is obligated under the terms of a lease of a pipeline component from Portland Pipe line Corporation. Granite State further states that it proposed a change in the quarterly calculation for the PCA in a filing on March 2, 1998 which was suspended pending a Technical Conference. Following the Technical Conference, Granite State says that it made alternate filings with the Commission proposing changes in the PCA surcharge calculation.

In a Letter Order issued June 25, 1998, the Commission accepted one of the alternates, subject to certain minor corrections, thus rendering the other alternative moot. Granite State says that in complying with the June 25th Letter Order, it filed the incorrect version of the PCA surcharge procedure which had been mooted by the Letter Order and the incorrect tariff sheet was accepted.

Third Substitute First Revised Sheet No. 334 is filed to correct the errors described in the filing and to establish the correct tariff procedures, effective July 1, 1998 as directed by the June 25, 1998 Letter order, according to Granite State.

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

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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. 98–32718 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–3–110–000]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1998.

Take notice that on November 30, 1998, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Twenty-third Revised Sheet No. 4, with an effective date of January 1, 1999.

Iroquois states that pursuant to Part 154 of the Commission's regulations and Section 12.1 of the General Terms and Conditions of its tariff, it is filing Twenty-third Revised Sheet No. 4 to reflect the GRI surcharge which the Commission approved in Docket No. RP97–149–003, et al. in an order issued on April 29, 1998.

Iroquois states that copies of its filing were served on all jurisdictional customers and intersted state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 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. 98–32706 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG98–14–001]

Kansas Pipeline Company; Notice of Filing

December 3, 1998.

Take notice that on November 18, 1998, Kansas Pipeline Company (KPC) filed standards of conduct under Order Nos. 497 *et seq.*[1] and Order Nos. 566 *et seq.*[2]

KPC states that it has served copies of its filing to each person designated on the official service list for this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protests should be filed on or before December 18, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. and Regs. 1986–1990 ¶ 30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), FERC Stats. and Regs. 1986–1990 ¶ 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), FERC Stats. and Regs. 1986–1990 ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), FERC Stats. and Regs. 1991–1996 ¶ 30,934 (1991) *rehearing denied*, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 f.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date*, 57 FR 58978 (December 14, 1992), FERC Stats. and Regs. 1991–1996 ¶ 30,958 (December 4, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), FERC Stats. and Regs. 1991–1996 ¶ 30,987 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), FERC Stats. and Regs. 1991–1996 ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. and Regs. 1991–1996 ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing*, 59 FR 65707, (December 21, 1994), 69 FERC ¶ 61,334 (December 14, 1994).

Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–32710 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–2–25–000]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1998.

Take notice on November 30, 1998, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets to become effective January 1, 1999:

Thirty-Third Revised Sheet No. 5
Thirty-Third Revised Sheet No. 6
Thirtieth Revised Sheet No. 7

MRT states that pursuant to the GRI provisions of the settlement in Docket No. RP98–235, MRT is filing to adjust its annual GRI transportaion surcharge rates established in the GRI 1999 RD&D program.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 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. 98–32704 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT 0F ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–162–000]

South Georgia Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

Take notice that on November 30, 1998, South Georgia Natural Gas Company (South Georgia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets with the proposed effective date of January 1, 1999:

Twelfth Revised Sheet No. 5
Eleventh Revised Sheet No. 6
Seventh Revised Sheet No. 14
Eighth Revised Sheet No. 32

South Georgia states that the purpose of this filing is to eliminate its FAS 106 surcharge as provided in the Stipulation and Agreement filed on June 10, 1996 in Docket No. RP96–64–000, et al., and approved by the Commission in its order issued on July 18, 1996.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington 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. 98–32696 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Southern Natural Gas Company; Notice of Settlement Compliance Filing

December 3, 1998.

Take notice that on November 30, 1998, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets to become effective January 1, 1999:

Twenty-Eighth Revised Sheet No. 14a
Thirty-Fourth Revised Sheet No. 15a
Twenty-Eighth Revised Sheet No. 16a
Thirty-Fourth Revised Sheet No. 17a
Fifteenth Revised Sheet No. 18a

Southern asserts that the purpose of this filing is to comply with the Commission's Order issued on September 29, 1995, which approved the Stipulation and Agreement (Settlement) filed by Southern on March 15, 1995 in Docket Nos. RP89–224–012, et al.

In accordance with Article VII of the Settlement, Southern has made this filing to recover a GSR volumetric surcharge based on an estimate of its 1999 GSR costs. Southern also indicates, based on estimated data, a GSR surcharge refund will be made on March 31, 1999 in the amount of approximately $900,000.

Paragraph 17 of Article VII of the Settlement provides for Southern to file by December 1 of each year to collect unrecovered gas supply realignment *GSR) costs through its GSR volumetric surcharge, to be effective for the parties supporting the Settlement beginning January 1 of the following year. The proposed GSR volmetric surcharge of $.0002/Dth reflects a reduction from the $.0018/Dth surcharge currently in effect.

Southern states that copies of the filing were served upon Southern's customers, intervening parties and interested state commissions.

Any person desiring to be heard or to protests said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426, in accordance with Sections 385.214 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. 98–32694 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–163–000]

Southern Natural Gas Company, Notice of Cost Recovery Filing

December 3, 1998.

Take notice that on November 30, 1998, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets with the proposed effective date of Janaury 1, 1999.

Forty-Second Revised Sheet No. 14
Twenty-Seventh Revised Sheet No. 14a
Sixty-Third Revised Sheet No. 15
Thirty-Third Revised Sheet No. 15a
Forty-Second Revised Sheet No. 16
Twenty-Seventh Revised Sheet No. 16a
Sixty-Third Revised Sheet No. 17
Thirty-Third Revised Sheet No. 17a

Southern sets forth in the filing its revised demand surcharges for the recovery of Order No. 636 transition costs associated with Southern LNG Inc. from the period August 1, 1998 through October 1, 1998. These costs have arisen as a direct result of restructuring under Order No. 636.

Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

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, NW, Washington, 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. 98–32697 Filed 12–8–98; 8:45 am]

BILLING CODE 6716–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–7–000]

Southern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1998.

Take notice that on November 30, 1998, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, certain tariff sheets, with an effective date of January 1, 1999.

Southern states that the proposed tariff sheets implement the Gas Research Institute's (GRI) revised surcharges for 1999. The 1999 GRI Funding Formula consists of surcharges of (i) .75¢ per Dth applicable to the commodity/usage portion of firm service rates and to interruptible rates and (ii) either 23.0¢ per Dth for high load factor customers or 14.2¢ per Dth for low load factor customers on the demand/reservation component of firm service rates. The 1999 GRI Funding Formula provides for a surcharge of 1.8¢ per Dth on service rates for small customers. The Commission authorized these surcharges in Docket No. RP98–235–000 to be effective January 1, 1999. *Gas Research Institute,* 84 FERC ¶ 61,326 (1998).

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 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. 98–32702 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–166–000]

Stingray Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1998.

Take notice that on December 1, 1998, Stingray Pipeline Company (Stingray) tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, to become effective January 1, 1999.

Stingray states that this filing is a general rate case under Section 4(e) of the Natural Gas Act and is consistent with the terms of Stingray's last rate case settlement at Docket No. RP94–301. The proposed rate changes would increase Stingray's cost of service by approximately $3.5 million from its last rate case. Stingray states that the increase in transportation rates is necessary to permit Stingray the opportunity to recover its revenue requirement.

Stingray requests whatever waivers may be necessary to permit the tariff sheets as submitted herein to become effective January 1, 1999.

Stingray states that copies of the filing are being mailed to Stingray's transportation customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, 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. 98–32698 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–167–000]

Tennessee Gas Pipeline Company; Notice of Filing and Request for Waiver

December 3, 1998.

Take notice that on December 1, 1998, Tennessee Gas Pipeline Company (Tennessee), tendered for filing under Article XXV of the General Terms and Conditions of Tennessee's FERC Gas Tariff, Fifth Revised Volume No. 1 both (i) a revised accounting of Tennessee's take-or-pay transition costs and (ii) a request for waiver of the requirement to restate Tennessee's take-or-pay transition cost surcharges.

Tennessee's request for waiver is based on the fact that Tennessee has not incurred any new recoverable take-or-pay costs since the effectiveness of Tennessee's last take-or-pay filing under Article XXV in Docket No. RP98–237.

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 or protests must be filed on or before December 10, 1998. 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. 98–32699 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MT99–3–000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1998.

Take notice that on November 25, 1998, Texas Eastern Transmission Corporation (Texas Eastern) submitted for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following revised tariff sheet, with an effective date of December 26, 1998:

Fifth Revised Sheet No. 647

Texas Eastern states that the above listed tariff sheet is being filed to simplify its tariff administration process by eliminating the listing of names of Texas Eastern's marketing affiliates in its Tariff. Texas Eastern also states that the name of Texas Eastern's marketing affiliates are now posted on Texas Eastern's Electronic Bulletin board and on its internet web site.

Texas Eastern states that copies of the filing were served on all affected customers of Texas Eastern and interested state commissions.

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 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. 98–32711 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–2–18–000]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1998.

Take notice that on November 30, 1998, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets listed in Appendix A to the filing, with an effective date of Janaury 1, 1999.

Taxas Gas states that the revised tariff sheets are being filed pursuant to Section 22 of the General Terms and Conditions of Texas Gas's FERC Gas Tariff, First Revised Volume No. 1, to reflect the 1999 General RD&D Funding Units authorized in the ''Order Approving Settlement,'' issued by the Commission on April 29, 1998, in Docket No. RP97–149–003, et al., at 83 FERC 61,093.

Texas Gas states that copies of this filing have been served upon Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 835.214 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 appropriae 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. 98–32703 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–344–012]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1998.

Take notice that on November 30, 1998, Texas Gas Transmission Corporation (Texas Gas) tendered for filing, as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets contained in Appendix A to the filing, to become effective on the dates indicated.

Texas Gas states that this filing is made to implement the provisions of the Stipulation and Agreement of settlement in Docket No. RP97–344 as approved by the Order Approving Offer of Settlement and Remanding Case for Hearing issued by the Commission on July 15, 1998 and the Order Denying Rehearing and Providing Guidance on Hearing Issues issued by the Commission on October 14, 1998.

Texas Gas state that copies of this filing have been served upon all of

Texas Gas's jurisdictional customers, all parties on the Commission's official service list in this proceeding, interested states commissions, and the FERC Staff.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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. 98–32715 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–170–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1998.

Take notice that on December 1, 1998, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, Third Revised Sheet No. 333 and First Revised Sheet No. 334. Such tariff sheets are proposed to be effective January 1, 1999.

On April 29, 1998, the Commission issued an Order (April 29 Order) in Docket Nos. RP97–149, RP97–391 and RM97 (not consolidated) approving the January 21, 1998 Stipulation and Agreement (S&A) filed by Gas Research Institute (GRI). As part of the S&A, signatory pipelines agreed to be fully voluntary collection agents for shippers who voluntarily choose to support GRI programs through a ''check the box'' approach on pipeline invoices. The invoice procedure, as stated in the S&A, will be described as a voluntary contribution mechanism in the General Terms and Conditions of the pipelines tariff and will allow customers to specify the level of contribution and the projects or project areas to be funded.

Transco states that the amounts collected pursuant to the ''check the box'' procedure will not be part of pipeline rates and the Commission will not review or approve any such amounts or projects. As a signatory party to the S&A, the purpose of the instant filing is to include a Voluntary Contribution Mechanism provision, regarding GRI funding, in Transco's FERC Gas Tariff.

Transco states that copies of the filing are being mailed to affected customers and interested State Commissioners.

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 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. 98–32701 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–71–013 and RP97–312–006]

Transcontinental Gas Pipe Line Corporation; Notice of Refund Report

December 3, 1998.

Take notice that on November 30, 1998, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing a refund report showing that on October 30, 1998, Transco submitted refunds/surcharges (total principal and interest amount of $86,423,659.21) to all affected shippers in Docket Nos. RP97–71 and RP97–312.

Transco states that on June 12, 1998, the Commission issued its ''Order Approving and Clarifying Contested Settlement'' which approved the Stipulation and Agreement (Agreement) filed January 20, 1998 in Docket Nos. RP97–71 and RP97–312. The Agreement resolved, among other things, Transco's cost of service (excluding rate of return), overall throughput level, and mix of throughput and certain cost allocation and rate design issues for the Docket No. RP97–71 rate period commencing May 1, 1997. Therefore, pursuant to Article XII of the Agreement, the effective date of the Agreement is September 1, 1998, which is the date Transco began billing the settlement rates. Refunds must be made on or before October 30, 1998.

Transco further states that based on the settlement it has calculated storage and transportation refunds for the period May 1, 1997 (the beginning of the Docket No. RP97–71 rate period) through August 31, 1998 based on the difference between the amounts billed and amounts calculated utilizing settlement rates, subject to the refund floor.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before December 10, 1998. 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. 98–32714 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–394–002]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1998.

Take notice that on November 30, 1998 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets which tariff sheets are enumerated in Appendix A attached to the filing. Such tariff sheets are proposed to be effective November 1, 1998.

On September 1, 1998, Transco filed in the referenced docket to implement new Rate Schedules WSS-Open Access and WSS Open Access-R to accommodate requests by several of its shippers to convert their Section 7(c) Rate Schedule WSS firm storage service to service under Transco's blanket

certificate and Part 284 of the Commission's regulations. On October 28, 1998, the Commission issued an ''Order Accepting Certain Tariff Sheets Subject to Conditions and Rejecting Other Tariff Sheet as Moot'' (October 28 Order) and required Transco to file revised tariff sheets consistent with its discussion in the order.

In compliance with the October 28 Order, Transco is filing revised tariff sheets in the instant filing to (1) revise Section 9 (and remove Sections 9.2–9.5 as no longer necessary) of Rate Schedule WSS and Section 8 of Rate Schedule WSS-Open Access to include the base gas volume that each customer has the right to repurchase and clarify that new customers are not required to provide base gas; and (2) remove the words ''by seller'' from the last sentence in Section 7.1(a) of Rate Schedule WSS-Open Access. With regard to the correct WSS base gas volume, please refer to Appendix B attached to the filing which provides the amount of injected base gas in the Washington Storage Field as recorded in Transco's audited accounting records.

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. 98–32719 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–76–001]

Viking Gas Transmission Company; Notice of Filing

December 3, 1998.

Take notice that on November 30, 1998, Viking Gas Transmission company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the folloiwing tariff sheet with a proposed effective date of November 2, 1998:

Substitute Eighth Revised Sheet No. 87

Viking states that the purpose of this filing is to comply with the October 30, 1998 Letter Order issued by the Office of Pipeline Regulation in Docket No. RP99–76–000 (October 30, 1998 Letter Order). The October 30, 1998 Letter Order directed Viking to incorporate Standard 1.3.2(vi) in its tariff and to indicate which part of Viking's tariff complies with the Commission's regulations and Order No. 587–G regarding waiver of penalties for bumped interruptible shippers. Accordingly, Viking has incorporated Standard 1.3.2(vi) by reference on Sheet No. 87. Viking submits that it is in compliance with Section 284.10(c)(1)(i)(A) and Order No. 587–G regarding waiver of penalties for bumped interruptible shippers since Viking's tariff does not impose daily penalties on shippers using interruptible contracts during non-critical periods.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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. 98–32692 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–119–001]

Viking Gas Transmission Company; Notice of Filing

December 3, 1998.

Take notice that on November 30, 1998, Viking Gas Transmission Company (Viking) filed a report detailing Viking's compliance with the March 27, 1998 Letter Order issued by the Office of Pipeline Regulation, Rate Analysis Branch III, issued in docket No. RP98–119–000 (March 27, 1998 Letter Order).

The March 27, 1998 Letter Order accepted Viking's January 27, 1998 Report of Penalty Revenue Credits (January 27, 1998 Report) for the period November 1, 1996 through October 31, 1997 but directed Viking to credit interest amounts for that period to its shippers. Viking has calculated the interest and the resulting credits to Viking's shippers on the Exhibit attached to its November 30, 1998 Filing. Viking will credit this amount to its shippers in the November 1998 invoices that will be mailed December 1999.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers, persons on the official service list compiled by the Secretary, and to affected state regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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. 98–32717 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–104–004]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

December 3, 1998.

Take notice that on December 1, 1998, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets listed on Appendix A to the filing, to become effective January 1, 1999.

On September 18, 1998, the Commission issued its Letter Order in the above-referenced docket accepting the Settlement Agreement filed by

Williston Basin on July 24, 1998 and requiring that Williston Basin refile the pro forma tariff sheets as tariff sheets to be effective on the first day of the calendar month commencing no less than 90 days after a final Commission Order approving the Settlement Agreement. Williston Basin states that the tariff sheets listed above are in compliance with the Commission's September 18, 1998 Letter Order and represent Williston Basin's Pooling Service and Nomination Aggregation Service.

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. 98–32716 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–11–000, et al.]

Jersey Central Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

December 2, 1998.

Take notice that the following filings have been made with the Commission:

1. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company and AmerGen Energy Company, LLC

[Docket Nos. EC99–11–000, EL99–13–000, and ER99–754–000]

Take notice that on November 25, 1998, pursuant to Sections 203 and 205 of the Federal Power Act, and Parts 33 and 35 of the Commission's regulations (18 CFR Parts 33 and 35), Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company (doing business as and collectively referred to herein as GPU Energy), and AmerGen Energy Company, LLC (AmerGen), filed certain applications and rate schedules associated with the sale of the Three Mile Island Unit 1 Nuclear Generating Facility (TMI–1), located near Middletown, Pennsylvania, by GPU Energy and its affiliate, GPU Nuclear, Inc. (GPUN), to AmerGen pursuant to an Asset Purchase Agreement dated October 15, 1998 (the TMI–1 Asset Purchase Agreement).

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Montaup Electric Company and Somerset Power LLC

[Docket No. EC99–12–000]

Take notice that on November 30, 1998 Montaup Electric Company (Montaup) and Somerset Power LLC (Somerset Power) (collectively, Applicants) submitted for filing, pursuant to Sections 203 and 205 of the Federal Power Act and Parts 33 and 35 of the Commission's regulations, an application and interconnection agreement in connection with the proposed sale by Montaup to Somerset Power of facilities and other assets known as Somerset Station, pursuant to a series of agreements dated October 13, 1998.

Copies of the filing have been served on the regulatory agencies of the Commonwealth of Massachusetts and the States of Rhode Island and Connecticut.

Comment date: December 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Allegheny Power Service Corporation, et al.

[Docket No. ER97–697–002]

Take notice that on November 14, 1997, Allegheny Power Service Corporation, Cleveland Electric Illuminating Company, Toledo Edison Company, Ohio Edison Company, Pennsylvania Power Company, Southern Company Services, Inc., Virginia Electric & Power Company, and Ontario Hydro submitted a six-month report on the GAPP Experiment which was initiated on April 2, 1997.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: December 22, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Horizon Energy Company

[Docket No. ER98–380–006]

Take notice that on November 25, 1998, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

5. New England Power Pool

[Docket No. ER99–725–000]

Take notice that on November 27, 1998, the New England Power Pool (NEPOOL) Executive Committee filed a Service Agreement for Through or Out Service or In Transmission Service pursuant to Section 205 of the Federal Power Act and 18 CFR 35.13 of the Commission's regulations.

Acceptance of this Service Agreement will recognize the provision of Firm In Service transmission to Central Maine Power Company, in conjunction with Regional Network Service, in accordance with the provisions of the Restated NEPOOL Open Access Transmission Tariff filed with the Commission on December 31, 1996, as amended and supplemented.

NEPOOL requests a retroactive effective date of November 1, 1998 for commencement of transmission service.

Copies of this filing were sent to all NEPOOL members, the New England public utility commissions and all parties to the transaction.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Kansas City Power & Light Company

[Docket No. ER99–726–000]

Take notice that on November 27, 1998, Kansas City Power & Light Company (KCPL) tendered for filing a Service Agreement dated December 1, 1998, between KCPL and Entergy Services, Inc. This Agreement provides for Non-Firm Power Sales Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are pursuant to KCPL's compliance filing in Docket No. ER94–1045.

KCPL proposes an effective date of December 1, 1998, and requests waiver of the Commission's notice requirement.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Washington Water Power Company

[Docket No. ER99–727–000]

Take notice that on November 27, 1998, notice is hereby given that Service Agreement No. 84, previously filed with the Federal Energy Regulatory Commission by Washington Water Power, under the Commission's Docket No. ER97–1252–000 with Mock Energy Services, LP, is to be terminated December 31, 1998 by request of the power marketer, by letter dated September 15, 1998, because of its decision to exit the power marketing business.

Notice of the termination has been served on Coral Energy Resources, LP.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Arizona Public Service Company

[Docket No. ER99–728–000]

Take notice that on November 27, 1998, Arizona Public Service Company (APS) tendered for filing a Service Agreement under APS' FERC Electric Tariff, Original Volume No. 3, Market rate Tariff No. 1, for service to the Merchant Energy Group of the Americas, Inc. (MEGA).

A copy of this filing has been served on the Arizona Corporation Commission and MEGA.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Kansas City Power & Light Company

[Docket No. ER99–729–000]

Take notice that on November 27, 1998, Kansas City Power & Light Company (KCPL) tendered for filing a Service Agreement dated October 30, 1998, between KCPL and Constellation Power Source, Inc. This Agreement provides for the rates and charges for Non-Firm Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order 888–A in Docket No. OA97–636.

KCPL proposes an effective date of November 5, 1998, and requests waiver of the Commission's notice requirement.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Kansas City Power & Light Company

[Docket No. ER99–730–000]

Take notice that on November 27, 1998, Kansas City Power & Light Company (KCPL) tendered for filing a Service Agreement dated October 30, 1998, between KCPL and Constellation Power Source, Inc. This Agreement provides for the rates and charges for Short-Term Firm Point-To-Point Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order 888-A in Docket No. OA97–636-000.

KCPL proposes an effective date of November 5, 1998 and requests a waiver of the Commission's notice requirement to allow the requested effective date.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–731–000]

Take notice that on November 27, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing, pursuant to its FERC Electric Tariff Rate Schedule No. 2, a service agreement for Sempra Energy Trading Corp., to purchase electric capacity and energy pursuant at negotiated rates, terms, and conditions.

Con Edison states that a copy of this filing has been served by mail upon Sempra Energy Trading Corp.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Washington Water Power Company

[Docket No. ER99–732–000]

Take notice that on November 27, 1998, Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to Section 205(d) of the Federal Power Act, with 18 CFR Part 35 of the Commission Rules and regulations and Paragraph II. (D) of FERC Docket No. ER97–7–000, an executed Long Term Service Agreement and Amendment under WWP's FERC Electric Tariff First Revised Volume No. 9, with Montana Power Company, Puget Sound Energy, Portland General Electric (PGE) and PacifiCorp, whereby WWP will provide the energy to operate pumps at the Nichols Pumping Station for the Colstrip Project. Also included with this filing are previously filed Certificates of Concurrence for each party to the Agreement in the event a Party elects to make exchanges, with the exception of PGE. WWP is filing a Certificate of Concurrence by PGE dated November 25, 1998.

WWP requests waiver of the prior notice requirements and requests that this Service Agreement and Amendment be accepted for filing effective November 1, 1998.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Carolina Power & Light Company

[Docket No. ER99–733–000]

Take notice that on November 27, 1998, Carolina Power & Light Company (CP&L), tendered for filing executed Service Agreements with Merchant Energy Group of the Americas, Inc., and Potomac Electric Power Company under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4. These Service Agreements supersede the un-executed Agreements originally filed in Docket No. ER98–3385–000 and approved effective May 18, 1998.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. New England Power Pool

[Docket No. ER99–734–000]

Take notice that on November 27, 1998, the New England Power Pool (NEPOOL or Pool), Executive Committee filed a request for termination of membership in NEPOOL, with an effective date of December 1, 1998, of Delmarva Power & Light Company (Delmarva). Such termination is pursuant to the terms of the NEPOOL Agreement dated September 1, 1971, as amended, and previously signed by Delmarva. The New England Power Pool Agreement, as amended (the NEPOOL Agreement), has been designated NEPOOL FPC No. 2.

The Executive Committee states that termination of Delmarva with an effective date of December 1, 1998, would relieve this entity, at Delmarva's request, of the obligations and responsibilities of Pool membership and would not change the NEPOOL Agreement in any manner, other than to remove Delmarva from membership in the Pool.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. New England Power Pool

[Docket No. ER99–735–000]

Take notice that on November 27, 1998, the New England Power Pool (NEPOOL or Pool), Executive Committee filed a request for termination of membership in NEPOOL, with an effective date of December 1, 1998, of PacifiCorp Power Marketing,

Inc., (PacifiCorp). Such termination is pursuant to the terms of the NEPOOL Agreement dated September 1, 1971, as amended, and previously signed by PacifiCorp. The New England Power Pool Agreement, as amended (the NEPOOL Agreement), has been designated NEPOOL FPC No. 2.

The Executive Committee states that termination of PacifiCorp with an effective date of December 1, 1998, would relieve this entity, at PacifiCorp's request, of the obligations and responsibilities of Pool membership and would not change the NEPOOL Agreement in any manner, other than to remove PacifiCorp from membership in the Pool.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Virginia Electric and Power Company

[Docket No. ER99–736–000]

Take notice that on November 27, 1998, Virginia Electric and Power Company, tendered for filing effective January 1, 1998, the Service Agreement with Ohio Edison Company, filed under Docket No. ER97–2511, designated as Service Agreement No. 39, under FERC Electric Tariff Original Volume No. 5, filed with the Federal Energy Regulatory Commission by Virginia Electric and Power Company is to be assigned to FirstEnergy Corp.

Copies of the filing were served upon Ohio Edison Company, FirstEnergy Corp., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Virginia Electric and Power Company

[Docket No. ER99–737–000]

Take notice that on November 27, 1998, Virginia Electric and Power Company, tendered for filing a Service Agreement with Duke/Louis Dreyfus L.L.C., effective October 1, 1998, filed under Docket No. ER96–2920, designated as Service Agreement No. 5, under FERC Electric Tariff Original Volume No. 5, filed by Virginia Electric and Power Company is to be assigned to Duke Energy Trading and Marketing, L.L.C.

Copies of the filing were served upon Duke/Louis Dreyfus L.L.C., Duke Energy Trading and Marketing, L.L.C., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Peco Energy Company

[Docket No. ER99–738–000]

Take notice that on November 27, 1998, PECO Energy Company (PECO), tendered for filing a Service Agreement dated November 20, 1998 with Northeast Energy Services, Inc. (NORESCO), under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds NORESCO as a customer under the Tariff.

PECO requests an effective date of November 20, 1998, for the Service Agreement.

PECO states that copies of this filing have been supplied to NORESCO and to the Pennsylvania Public Utility Commission.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Ameren Services Company

[Docket No. ER99–739–000]

Take notice that on November 27, 1998, Ameren Services Company (ASC), tendered for filing a Service Agreement for Market Based Rate Power Sales between ASC and Madison Gas & Electric Co., (MG&E). ASC asserts that the purpose of the Agreement is to permit ASC to make sales of capacity and energy at market based rates to MG&E pursuant to ASC's Market Based Rate Power Sales Tariff filed in Docket No. ER98–3285–000.

ASC requests that the service Agreement be allowed to become effective October 27, 1998.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Southern Indiana Gas and Electric Company

[Docket No. ER99–740–000]

Take notice that on November 27, 1998, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing two (2) service agreements for firm transmission service under Part II of its Transmission Services Tariff respectfully with TransAlta Energy Marketing, Inc., and Constellation Power Source, Inc., and two (2) service agreements for non-firm transmission service under Part II of its Transmission Services Tariff respectfully with TransAlta Energy Marketing, Inc., and Constellation Power Source, Inc.

Copies of the filing were served upon each of the parties to each service agreement.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Central Vermont Public Service Corporation

[Docket No. ER99–743–000]

Take notice that on November 27, 1998, Central Vermont Public Service Corporation (CVPS), tendered for filing a letter stating that CVPS does not plan to file a Forecast 1999 Cost Report for FERC Electric Tariff, Original Volume No. 4, since there are no customers expected to take such service.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Central Vermont Public Service Corporation

[Docket No. ER99–744–000]

Take notice that on November 27, 1998, Central Vermont Public Service Corporation (CVPS), tendered for filing the Forecast 1999 Cost Report required under Paragraph Q–2 on Original Sheet No. 19 of the Rate Schedule FERC No. 135 (RS–2 Rate Schedule) under which CVPS sells electric power to Connecticut Valley Electric Company Inc., (Customer). CVPS states that the Cost Report reflects changes to the RS–2 rate schedule which were approved by the Commission's June 6, 1989, order in Docket No. ER88–456–000.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Central Vermont Public Service Corporation

[Docket No. ER99–745–000]

Take notice that on November 27, 1998, Central Vermont Public Service Corporation (CVPS), tendered for filing the Forecast 1999 Cost Report required under Article 2.3 on Second Revised Sheet No. 18, of FERC Electric Tariff, Original Volume No. 3, of CVPS under which CVPS provides transmission and distribution service to Vermont Electric Cooperative, Inc., Lyndonville Electric Department, Village of Ludlow Electric Light Department, Village of Johnson Water and Light Department, Village of Hyde Park Water and Light Department, Rochester Electric Light and Power Company, and Woodsville Fire District Water and Light Department.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Automated Power Exchange, Inc.

[Docket No. ER99–746–000]

Take notice that on November 27, 1998, Automated Power Exchange, Inc., filed a revision to its rate schedule.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Connecticut Valley Electric Company Inc.

[Docket No. ER99–748–000]

Take notice that on November 27, 1998, Connecticut Valley Electric Company Inc. (Connecticut Valley), tendered for filing the determination of the 1998 payment to Connecticut Valley as provided by the Transmission Service Agreement with Woodsville Water & Light Department (Woodsville) dated December 15, 1975. Such agreement was originally filed in Docket No. ER94–637–000 and designated at Rate Schedule FERC No. 12.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Florida Keys Electric Cooperative Association, Inc.

[Docket No. ES99–13–000]

Take notice that on November 23, 1998, Florida Keys Electric Cooperative Association, Inc. (FKEC) submitted for filing an application to issue securities pursuant to section 204 of the Federal Powers Act (FPA), 16 U.S.C. § 824c, and Part 34 of the Federal Energy Regulatory Commission's (Commission) regulations (18 CFR Part 34). FKEC's filing is available for public inspection at its offices in Tavernier, Florida.

FKEC respectfully requests that the Commission (1) exempt FKEC from any requirement to use competitive bidding or negotiated placement in relation to the debt, (2) authorize long-term borrowing pursuant to a mortgage, and (3) authorize borrowing pursuant to two credit lines for the two-year period beginning January 4, 1999.

Comment date: December 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Tampa Electric Company

[Docket No. OA97–642–000]

Take notice that on November 30, 1998, Tampa Electric Company (Tampa Electric) amended its pending filing in this docket by submitting revised tariff sheets for inclusion in the open access transmission tariff that Tampa Electric filed on July 14, 1997, in compliance with Order No. 888–A.

Tampa Electric states that the tendered tariff sheets: (1) update the tariff administrator's title and address information; (2) correct inadvertent errors and omissions in the text of the tariff; (3) conform the scheduling procedures to current regional practices; and (4) update the specified real power loss factor.

Tampa Electric proposes that the tariff sheets updating the real power loss factor be made effective on May 1, 1998, and that the other tariff sheets be made effective on May 3, 1997, or such other date that the Commission specifies as the effective date for the tariff.

Copies of the amendatory filing have been served on all persons on the official service list in this docket and the Florida Public Service Commission.

Comment date: December 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–32613 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–800–000]

Eastern Shore Natural Gas Company; Revised Notice of Intent To Prepare an Environmental Assessment for the Proposed 1999 System Expansion Project and Request for Comments on Environmental Issues

December 3, 1998.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of Eastern Shore Natural Gas Company's (Eastern Shore) proposal to construct about 4.5 miles of 16-inch-diameter pipeline in Chester County, Pennsylvania; 3.5 miles of 16-inch-diameter pipeline in New Castle County Delaware; and one 1,085 horsepower (hp) compressor unit in New Castle County proposed in the 1999 System Expansion Project.[1] The application and other supplemental filings in this docket are available for viewing on the FERC Internet website (www.ferc.fed.us). Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions.

This EA will be used by the Commission in its decisionmaking process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law. A fact sheet addressing a number of typically asked questions, including the use of eminent domain, is attached to this notice as appendix 1.[2]

Summary of the Proposed Project

Eastern Shore seeks authorization for the following:

- Install a 1,085 hp compressor unit at its existing Del City Compressor Station, 3 miles west of Delaware City, New Castle County, Delaware;
- Construct about 4.5 miles of 16-inch-diameter loop in Chester County, Pennsylvania;
- Construct about 3.5 miles of 16-inch-diameter loop in New Castle County, Delaware.

The location of the project facilities is shown in appendix 2.

Land Requirements for Construction

Construction of the proposed facilities would require about 56.1 acres of land. Following construction, about 36.1 acres would be maintained as new permanent right-of-way. The remaining 20.0 acres of land would be restored and allowed to revert to its former use.

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[1] Eastern Shore Natural Gas Company's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources, fisheries, and wetlands.
- Land use.
- Cultural resources.
- Vegetation and wildlife.
- Endangered and threatened species.
- Public safety.
- Air quality and noise.
- Hazardous Waste.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section on pages 4 and 5 of this notice.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Eastern Shore. This preliminary list of issues may be changed based on your comments and our analysis.

- One federally listed threatened species, the bog turtle, may occur in the proposed project area.
- Nineteen streams and thirteen wetlands would be crossed by the project.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations/routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE, Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.2;
- Reference Docket No. CP98–800–000; and
- Mail your comments so that they will be received in Washington, DC on or before January 4, 1999.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3). Only intervenors have the right to seek rehearing of the Commission's decision.

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file later interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the ''RIMS'' link to information in this docket number. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–32709 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

December 3, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Subsequent license.

b. *Project No.:* 1981–010.

c. *Date filed:* February 25, 1998.

d. *Applicant:* Oconto Electric Cooperative.

e. *Name of Project:* Stiles Project.

f. *Location:* On the Oconto River, near the City of Oconto Falls, Oconto County, Wisconsin. This project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. Tony Anderson, General Manager, Oconto Electric Cooperative, 7479 REA Road, P.O. Box 168, Oconto Falls, WI 54154–0168, (920) 846–2816.

i. *FERC Contact:* Any questions on this notice should be addressed to Patti Leppert-Slack, E-mail address patricia.leppertslack@ferc.fed.us or telephone (202) 219–2767.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance of this notice.

All documents (original and eight copies) should be filed with: David P.

Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission, relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application has been accepted for filing and is ready for environmental analysis at this time.

1. *Description of the Project:* The existing project consists of: (1) a 20-foot-high earthen embankment and 463-acre impoundment; (2) a 66-foot-long powerhouse, containing two generating units with a total capacity of 1,000 kilowatts; (3) a substation; and other appurtenances.

m. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference, located at 888 First Street N.E., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address shown in item h above.

n. *This notice also consists of the following standard paragraphs:* A4 and D10.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–32712 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License

December 3, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment to License.

b. *Projects:* Catawba-Wateree Project No. 2232–381; Ninety-Nine Islands Project No. 2331–014; Gaston Shoals Project No. 2332–021; Keowee & Jocassee Project No. 2503–048; Bad Creek Project No. 2740–041.

c. *Date Filed:* November 5, 1998.

d. *Applicant:* Duke Power Company.

e. *Location:* The five hydroelectric projects listed above are on the Catawba River in the general region of western North Carolina and northern South Carolina. The following Lakes are included in the above projects: James, Rhodhiss, Hickory, Lookout Shoals, Norman, Mountain Island, Wylie, Fishing Creek, Great Falls, Rocky Creek, Wateree, Bad Creek, Ninety-nine Islands, Gaston Shoals, Jocassee and Keowee.

f. *Filed Pursuant to:* 18 CFR 4.200.

g. *Applicant Contact:* Mr. Joe Hall, Duke Power, P.O. Box 1006, Charlotte, NC 28201–1006, (704) 382–8576.

h. *FERC Contact:* Steve Hocking (202) 219–2656.

i. *Comment Date:* January 7, 1999.

j. *Description of Amendment:* Duke Power requests Commission approval of an Excavation programmatic Agreement (PA) for its five hydroelectric projects listed above. The PA would allow Duke to authorize, without Commission approval, applications to dredge or excavate less than 2,000 cubic yards of soil from the above lakes. The PA outlines those procedures Duke Power would use to review such applications including its permitting process, excavation criteria, consultation requirements, environmental requirements and other restrictions.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as

applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–32713 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–17–000]

Landowner Notification, Residential Area Designation and Environmental Filing Requirements; Notice Organizing Staff Conference

December 3, 1998.

This notice provides the organizational format for the Federal Energy Regulatory Commission staff conference to be held on December 9, 1998. The purpose of this conference is to enable interested parties to discuss with staff, as well as each other, issues relating to the Commission's landowner notification policies and its environmental designation of residential areas.

On October 16, 1998, notice of the technical conference was published in the **Federal Register.**[1] The notice requested those who were intereted in making presentations at the conference to submit a request for time. Ten parties indicated an interest in participating at the conference.

The conference will begin with opening remarks by Commission staff and Commissioner Linda Breathitt. The opening remarks will be followed by the presentations. Each presentation will be limited to ten minutes. After the first five presentations, time will be allowed for questions to be asked of the presenters by the staff and those in the audience. There will then be a break followed by the remaining presentations and another discussion session.

The order of presentation will be:

Representative from Central Maine Power Company; Mary Hanna, Citizens Advocates for Pipeline Safety; Steven Horton, Duke Energy Pipelines; Joan Dreskin, INGAA; Anne Marie Mueser, GASP Coalition.

Suzanne Ryan or Sheila Bergeron, Newton Citizens Committee; Dave Sinclair, Enron Gas Pipeline Group; Gordon Busy, Ohio-Pa. Landowners Association; Representative from Pipeline Contractors Association; Floyd Ball, Transcontinental Gas Pipe line Company

We anticipate that presentations will be completed prior to lunch. If necessary, we will reconvene after lunch to continue discussion and take comments from the audience.

An overhead projector will be made available at the conference. If those making presentations require additional audiovisual services, they should contact John Leiss at (202) 208–1106 by December 7, 1998.

The conference will begin at 9:00 a.m. at the Commission's offices, 888 First Street, NE, Washington, DC in the Commission Meeting Room. The Capitol Connection patrons in the Washington, DC area will receive notices regarding the broadcast of the conference. It also will be available, for a fee, live over the Internet, via C-Band Satellite, and via telephone conferencing. Persons interested in receiving the broadcast, or who need further information, should contact Shirley Al-Jarani of Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection web site at http://www.capitolconnection.gmu.edu and click on ''FERC.''

Questions about the conference should be directed to: John S. Leiss, Office of Pipeline Regulation, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–1106.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–32708 Filed12–8–98; 8:45 am]

BILLING CODE 6717–01–M

[1] 63 FR 55715.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6199–7]

Final Notification of Health Effects Testing Requirements for Baseline Gasoline and Oxygenated Nonbaseline Gasolines and Approval of an Alternative Emissions Generator

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The purpose of this document is to announce that the Environmental Protection Agency (EPA) has notified the American Petroleum Institute (API) test group consortium (hereinafter 211(b) Research Group) for baseline gasoline and gasolines containing methyl tertiary butyl ether (MTBE) and other oxygenates, of the final Alternative Tier 2 health effects testing requirements under the fuel and fuel additive (F/FA) registration testing requirements of 40 CFR part 79. This document also announces that EPA has approved the API alternative evaporative emissions generator for use in animal toxicity testing under the F/FA registration health effects testing regulations at 40 CFR 79.57.

DATES: The Alternative Tier 2 health effects testing requirements are effective upon receipt by the 211(b) Research Group of the notification letter discussed in this document.

ADDRESSES: Written requests for information regarding this notification should be addressed to Public Docket No. A–96–16, Waterside Mall (Room M–1500), Environmental Protection Agency, Air Docket Section, 401 M Street, SW, Washington, DC 20460. Materials relevant to this notification have been placed in Docket A–96–16. Documents may be inspected between the hours of 8:00 a.m. to 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: John Brophy, Environmental Scientist, U.S. Environmental Protection Agency, Office of Air and Radiation, (202) 564–9068.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are those that manufacture gasoline with or without the fuel additives MTBE, ethyl tertiary butyl ether (ETBE), ethyl alcohol (EtOH), tertiary amyl methyl ether (TAME), diisopropyl ether (DIPE), and tertiary butyl alcohol (TBA) and manufacturers

of these oxygenates and other gasoline additives. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Oil refiners, gasoline importers, oxygenate blenders, oxygenate and fuel additive manufacturers.

This table is not intended to be exhaustive, but, rather, illustrates the types of entities that EPA is currently aware of that are likely to be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether an entity not described by the examples listed in the table is subject to these requirements, refer to the applicability criteria in part 79 of title 40 of the Code of Federal Regulations. If questions remain regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

In accordance with 40 CFR 79.56(a), manufacturers of F/FAs may satisfy the Subpart F testing requirements on a group basis. Each individual manufacturer that is a member of such a group, however, continues to be individually subject to the testing and data submission requirements. Thus, this notice serves as a notice to all manufacturers of the subject F/FAs, that are not exempted from these requirements under the small business provisions of 40 CFR 79.58(d), that they are subject to these requirements.

I. Introduction

The Clean Air Act (CAA), as amended, required the Administrator of EPA to promulgate regulations requiring manufacturers of fuels and fuel additives to conduct tests to determine potential health effects of such products. The final rule, promulgated on May 27, 1994, established new health effects testing requirements for the registration of designated F/FAs as authorized by sections 211(b)(2) and 211(e) of the CAA.

The registration requirements are organized within a three-tier structure. Tier 1 requires F/FAs manufacturers to supply to EPA (1) the identity and concentration of certain emission products of designated F/FAs and an analysis of potential emission exposures, and (2) any available information regarding the health and welfare effects of the whole and speciated emissions. 40 CFR 79.52. Tier 2 requires that combustion emissions of each F/FA subject to the testing requirements be tested for subchronic systemic and organ toxicity, as well as the assessment of specific health effects endpoints. 40 CFR 79.53. Tier 3 testing may be required, at EPA's discretion, when remaining uncertainties as to the significance of observed health or welfare effects, or emissions exposures interfere with EPA's ability to reasonably assess the potential risks posed by emissions from a F/FA. 40 CFR 79.54. EPA's regulations permit submission of adequate existing test data in lieu of conducting new duplicative tests. 40 CFR 79.53(b). In addition, EPA's regulations permit the health effects testing requirements to be satisfied by participation in groups that are established in accordance with the grouping criteria set forth at 40 CFR 79.56. The regulations also include provisions for small businesses and certain types of products. 40 CFR 79.58.

At its discretion, EPA may modify the standard Tier 2 health effects testing requirements for a F/FA (or group thereof) by substituting, adding, or deleting testing requirements; or changing the underlying vehicle/engine specifications. 40 CFR 79.58(c). EPA will not, however, delete a testing requirement for a specific endpoint in the absence of existing adequate information, or an alternative testing requirement for that endpoint. 40 CFR 79.58(c). When EPA exercises its authority under this special provision, it will allow an appropriate time for completion of the prescribed alternative tests.

II. Alternative Tier 2 Testing Requirements

The Agency notified the 211(b) Research Group on August 20, 1997, of proposed health effects testing required under Alternative Tier 2 for baseline gasoline and oxygenated nonbaseline gasolines, and the proposed schedule for completion and submission of such tests. An associated **Federal Register** notice (62 FR 47400) initiated a 60-day public comment period which was extended an additional 60 days (62 FR 60675), to accommodate both the 211(b) Research Group's request for an extension, and to also allow the general public an additional period of time to comment. Copies of the documents associated with the extension and notification of the proposed tests and schedule under the Alternative Tier 2 provisions have been placed in the Docket.

This document announces that the EPA has notified the 211(b) Research Group of the final Alternative Tier 2 health effects testing requirements under 40 CFR 79.58(c).

The Agency notified API, by certified letter dated November 2, 1998, of the specific tests which the Agency is requiring under the Alternative Tier 2 provisions for baseline gasoline and oxygenated nonbaseline gasolines, and the schedule for completion and submission of such tests. A copy of the letter as well as the tests and schedule under the Alternative Tier 2 provisions have been placed in the Public Docket No. A–96-16, Waterside Mall (Room M–1500), Environmental Protection Agency, Air Docket Section, 401 M Street, SW, Washington, DC 20460. The notification letter is also available on the internet via the EPA's Mobile Sources home page at http://www.epa.gov/OMSWWW/.

III. Alternative Evaporative Emissions Generator

This document also announces that EPA has approved the 211(b) Research Group's alternative evaporation emissions generator for animal toxicity testing allowed under the F/FAs registration testing requirements of 40 CFR 79.57(f)(5).

Dr. Carol J. Henry, Director of the Health and Environmental Sciences Department, API, and head of the 211(b) Research Group, on July 1, 1997, sent a certified letter to EPA requesting approval of an alternative method for generating evaporative emissions (known as the stripper still method) for use in emissions characterization and animal health effects testing in accordance with the Alternative Tier 2 provisions.

Scientists from several EPA offices have reviewed the API submission for an alternative evaporative emissions generation method and concluded that it has met the necessary criteria under 40 CFR 79.57(f)(5). Therefore, the ''stripper still'' method has been approved for use in the Alternative Tier 2 animal toxicology tests.

In accordance with the requirements under 40 CFR 79.57(f)(5)(ii), all supporting procedural descriptions and justifications received from the 211(b) Research Group have been placed in the public record, along with the API request letter and EPA's evaluation of the methodology.

IV. Environmental Impact

EPA's health effects testing notification will result in no immediate environmental impact. Section 211(c) of the Clean Air Act, however, authorizes EPA to take regulatory action on fuels and fuel additives on the basis of information obtained from health effects testing conducted by manufacturers of F/FAs. Therefore, the information

obtained as a result of the testing required by EPA's notification may provide a basis for further regulatory action.

V. Economic Impact

Although the total cost for the testing requirements is significant, the cost is being shared among many F/FA manufacturers. Therefore, the actual cost to an individual F/FA manufacturer is expected to be modest. The F/FAs regulations at 40 CFR 79.58(d) contain special provisions for those fuel or fuel additive manufacturers whose total annual sales are less than $50 million, exempting these parties from the requirements discussed in this document.

List of Subjects in 40 CFR Part 79

Environmental protection, Air pollution control, Gasoline, Conventional gasoline, Oxygenates, Methyl tertiary butyl ether, Motor vehicle pollution.

Dated: November 17, 1998.

Robert Perciasepe,

Assistant Administrator.

[FR Doc. 98–32682 Filed 12–8–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6199–6]

Proposed Settlement; Polymers and Resins I and IV Emission Standard Litigation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Partial Settlement; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act (''Act''), notice is hereby given of a proposed partial settlement of *Wellman, Inc. et al.* v. *EPA*, No. 96–1419 (D.C. Cir.) and *Union Carbide Corporation, et al.* v. *EPA*, No. 96–1413 (D.C. Cir.). For a period of thirty days following the date of publication of this notice, the Agency will receive written comments relating to the settlement from persons who were not named as parties to the litigation in question. EPA or the Department of Justice is authorized under section 113(g) to withdraw its consent to the Settlement Agreement if appropriate in light of the public comments.

The cases involve challenges to the National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins, published in the **Federal Register** at 61 FR 46906 on September 5, 1996, and National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins published in the **Federal Register** at 61 FR 48208 on September 12, 1996.

DATES: Written comments on the Settlement Agreement must be received by January 8, 1999.

ADDRESSES: Written comments should be sent to Mark Dyner, Office of General Counsel (2333), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 260–5085. Copies of the Settlement Agreement are available from Phyllis Cochran, Air and Radiation Law Office (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 260–7606.

SUPPLEMENTARY INFORMATION: There is a separate proposed partial settlement agreement (''agreement'') for each case; however, the issues addressed in the agreements and the proposed resolution of those issues are in most relevant respects the same. The agreements are both between EPA and the petitioner, The Dow Chemical Company. For the convenience of interested parties, following is a brief summary of some of the key points of the agreements.

The agreements require EPA to conduct notice and comment rulemaking proposing (1) changes in the subject rules to resolve certain differences between the rules and the Hazardous Organic NESHAP (''HON''); (2) clarification of the applicability provisions regarding additions to plant sites; (3) revision of the applicability provisions that address primary product determinations to better address contract manufacturing practices; (4) simplification of the provisions applicable to batch process vents; and (5) revisions to certain reporting and recordkeeping requirements.

Section 113(g) of the Clean Air Act (42 U.S.C. 7413(g)) requires, with exceptions not pertinent here, that EPA publish notice of settlement agreements in the **Federal Register** and provide a reasonable opportunity for public comment. EPA or the Department of Justice may withhold consent to the proposed settlement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, inadequate or inconsistent with the requirements of the Clean Air Act.

Dated: December 2, 1998.

Scott Fulton,

Acting General Counsel.

[FR Doc. 98–32568 Filed 12–8–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 6199–5]

Proposed Settlement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed consent decree and settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree and settlement agreement in litigation instituted against the United States Environmental Protection Agency (''EPA'') by the Coalition for Clean Air, Inc., National Resources Defense Council, Inc., and Communities for a Better Environment (collectively, ''plaintiffs''). This lawsuit, originally filed in September 1997 and supplemented in October 1998, concerns EPA's January 8, 1997 approval under the Clean Air Act, 42 U.S.C. 7401 et seq., of the 1994 ozone California state implementation plan for the South Coast Air Basin (''1994 SIP'') 62 FR 1150.

DATES: Written comments on the proposed consent decree and settlement agreement must be received by January 8, 1999.

ADDRESSES: Written comments should be sent to David Jesson, Air Division (AIR–2), U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1288. Copies of the proposed consent decree and settlement agreement are available from Mr. Jesson. Copies of the proposed consent decree and settlement agreement have been lodged with the Clerk of the United States District Court for the Central District of California.

SUPPLEMENTARY INFORMATION: In *Coalition for Clean Air, et al.* v. *EPA*, No. 97–6916 (C.D. CA), plaintiff allege, among other things, that EPA failed to adopt certain mobile source measures that the State of California attempted to ''assign'' to EPA in the 1994 SIP and failed to conduct certain activities with respect to the public consultative process provided for in EPA's approval of the 1994 SIP.

In order to resolve this matter without protracted litigation, the plaintiffs and EPA have reached agreement on a proposed consent decree and settlement agreement that have been signed by the parties and lodged with the District Court on November 13, 1998. The proposed consent decree provides that EPA shall conclude the public consultative process in accordance with the schedule set forth therein. The accompanying proposed settlement agreement provides that EPA will undertake certain actions regarding Federal agencies and Federal mobile source ozone control measures in the South Coast Air Basin.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed consent decree and settlement agreement from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree and settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Dated: December 2, 1998.

Scott Fulton,

Acting General Counsel.

[FR Doc. 98–32569 Filed 12–8–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6198–4]

Request for Great Lakes Preproposals Through ''FY1999–2000 Great Lakes Priorities and Funding Guidance''

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of funding availability.

SUMMARY: EPA's Great Lakes National Program Office (GLNPO) is now requesting the submission of preproposals for GLNPO funding. This request is part of the *FY1999–2000 Great Lakes Priorities and Funding Guidance* (Funding Guidance). The Great Lakes Funding Guidance identifies Great Lakes priorities, solicits preproposals for assistance projects, and describes other Federal Great Lakes funding opportunities.

DATES: The deadline for submission of preproposals is January 15, 1999.

DOCUMENT AVAILABILITY: The Funding Guidance is available on the Internet at http://www.epa.gov/glnpo/fund/99guid.html. It is also available from Lawrence Brail (312–886–7474/brail.lawrence@epa.gov).

FOR FURTHER INFORMATION CONTACT: Mike Russ, EPA–GLNPO, G–17J, 77 West Jackson Blvd., Chicago, IL 60604 (312–886–4013/russ.michael@epamail.epa.gov).

SUPPLEMENTARY INFORMATION: USEPA's Great Lakes National Program Office is requesting Preproposals for Great Lakes projects addressing: Contaminated Sediments ($1.4 million), Pollution Prevention and Reduction—Binational Toxics Strategy ($800 thousand); Habitat (Ecological) Protection and Restoration ($1 million); Exotic Species ($300 thousand); and Emerging Issues ($300 thousand). A total of $3.8 million is targeted for awards in the Summer and Fall of 1999. A ''roadmap'' section describes some of the other Great Lakes Federal funding available through USEPA, the Natural Resources Conservation Service, the Fish and Wildlife Service, the Army Corps of Engineers, and the Federal Highway Administration.

Dated: November 30, 1998.

Gary V. Gulezian,

Director, Great Lakes National Program Office, Region 5.

[FR Doc. 98–32566 Filed 12–8–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–181065; FRL 6047–8]

Malathion and Diazinon; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a quarantine exemption request under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) from the U.S. Department of Agriculture (hereinafter referred to as the ''Applicant'') to use the pesticides malathion (CAS No. 121–75–5), formulated as Fyfanon ULV (EPA Registration No. 4787–8 and 51036–104) and diazinon (CAS No. 333–41–5), formulated as Diazinon 4-E (EPA Registration No. 769–687) to treat areas within Florida where nonindigenous subtropical fruit flies (various species in the family *Tephritidae*) are found. This notice provides a 30–day period for public comment on the request.

Four geographically distinct infestations of the Mediterranean fruit fly (*Ceratitis capitata*) were discovered in Florida in 1998. In addition, a widespread outbreak of the Mediterranean fruit fly was discovered in central Florida in 1997. In order to ensure that this pest did not become established in Florida, the Applicant and the State of Florida used the pesticides identified above, along with the release of sterile Mediterranean fruit flies and other measures, to eradicate the outbreaks.

The pesticide use that takes place related to exotic fruit fly eradication is occurring under the authorities of FIFRA section 18. Because EPA is interested in engaging stakeholders affected by important programs undertaken under section 18, the Agency is invoking its discretionary authority under 40 CFR 166.24(a)(7) and, through the publication of this notice, is soliciting public comment with respect to the eradication scheme proposed by the Applicant.

This notice does not constitute a decision by EPA on the application itself. The regulations governing Section 18 cite that the Administrator may determine that it is appropriate to publish a notice of receipt of an application for a quarantine exemption request [40 CFR 166.24 (a)(7)]. Such notice provides for opportunity for public comment on the application.

DATES: Comments must be received on or before January 8, 1999.

ADDRESSES: Three copies of written comments, bearing the identification notation ''OPP–181065,'' should be submitted by mail to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Follow the instructions under **SUPPLEMENTARY INFORMATION**. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be provided by the

submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. The docket is available for public inspection at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Daniel J. Rosenblatt, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail: Crystal Mall #2, Rm. 280, 1921 Jefferson Davis Highway, Arlington, VA, (703–308–9375); e-mail: rosenblatt.dan@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a federal or state agency from any provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a quarantine exemption for the use of malathion and diazinon to control non-indigenous subtropical fruit flies in Florida. Information in accordance with 40 CFR part 166 was submitted as part of this request.

The Applicant is responsible for operating quarantine programs in the United States to protect agriculture against the introduction and establishment of non-indigenous pest species. The establishment of a new exotic fruit fly species such as the Mediterranean fruit fly in the continental United States would be extremely costly for agricultural producers and related industries. The Applicant projects that the costs associated with the establishment of exotic fruit flies in the continental United States would be severe, dramatically curtailing interstate and international trade in numerous agricultural commodities, particularly citrus crops. In addition, the Applicant indicates that if nonindigenous exotic fruit flies become established such infestations will have significant negative biological and environmental consequences.

The Applicant maintains that exclusion and detection measures alone are not adequate to protect Florida from the introduction of nonindigenous and destructive fruit fly pests. Therefore, an emergency program capable of eradicating an outbreak once it is discovered is necessary. The Applicant's position is that the requested program is efficacious and, simultaneously, protective of public health and environment. The request describes several alternative approaches that were considered that appear to be less suitable or developed as compared to the proposed approach. For example, physical control measures, such as fruit stripping, cultural control measures through the modification of agricultural practices, biological controls such as the introduction of predator species, and several other alternative pesticides were considered by the Applicant.

The pesticidal approaches proposed for use under this program will be dictated by the magnitude of the pest infestation. For example, in the outbreak discovered in Dade County Florida in April 1998, a small number of localized ground-based applications of malathion bait were used, along with limited treatments of diazinon soil drench and sterile Mediterranean fruit fly releases. In the eradication program undertaken against the infestation of Mediterranean fruit flies centered in Lake County Florida in April 1998, 1,315 flies were trapped. An outbreak of this intensity required the use of both aerial and ground treatments of malathion bait in a 35.5 square mile area. Sterile Mediterranean fruit flies were also released in connection with this outbreak.

Under the exemption application now under consideration, the Applicant requested the use of malathion and diazinon to eradicate nonindigenous subtropical fruit flies. Following the identification of a quarantined fruit fly, malathion would be applied along with a protein bait attractant (at a rate of 2.4 ounces/acre of malathion with 9.6 ounces of protein hydrolysate/acre) through ground or aerial application equipment. Applications are proposed at 5 to 21 day intervals until eradication is achieved, as determined by an absence of detections in baited traps. The total number of applications includes sufficient time to extend through two fruit fly life cycles beyond the last fly find. Fruit fly life cycles are temperature dependent, and could range from approximately 26 to 90 days. The applicant referenced the general conditions in Florida and estimates that six to eight applications are typically needed in order to cover two life cycles. Because of these uncertainties, it is difficult to anticipate the total amount of pesticide required for a given infestation or time period.

The diazinon would be applied through soil drench technique directly within the drip line of trees determined to have been hosts to the pests. The proposed application rate for diazinon is 1.8 ounces pesticide per 1,000 square feet of soil surface within the drip line of host trees and to the soil around host nursery stock. A maximum of 10 pounds of diazinon was proposed.

A summary of the other major proposed measures and eradication program conditions include:

1. *Expansion of fruit fly detection and prevention activities.* The exotic fruit fly trapping and detection activities represent the initial defense against pest outbreaks. Given that fruit fly populations are capable of reproducing quickly, a comprehensive scouting and exclusion program is critical to preventing the establishment of these pests in the contiguous United States. In addition, prevention efforts are in line with the objective of risk reduction since it is likely that any eradication program that is undertaken would be smaller in scope if the outbreak is detected shortly after the introduction of the pest.

Given that background, the Applicant has indicated that more fruit fly traps will be placed in the field in the future. Further, the traps will be serviced by new personnel hired to expand the detection efforts in Florida. In addition, new or expanded exclusion measures will be used to increase the security of the Florida border from the accidental importation of contaminated produce. For example, screening tools such as canine detection teams and new x-ray equipment will be used in Florida ports.

2. *Sterile Insect Technique (SIT)* which involves the introduction of sterilized male flies into the infested area with the objective of fostering sterile flies to mate with feral female flies. The resultant eggs will be infertile. The Applicant is an advocate of SIT and believes it should be used when it is possible to over flood the wild population with sterile males. The Applicant also mentions that SIT can be used as a preventative measure and cited the ongoing release of SIT over Manatee County, Florida.

3. *Public notification and education* whereby residents in treated areas are to receive a minimum of 24 hours advance notice for a treatment planned around their homes. The notification measures include precautions that the public might take to protect their health, property, and pets. Further, the Applicant will establish a telephone hotline so that individuals in the treatment areas can obtain current information about the eradication program and report any suspected adverse effects connected with the treatments. The outreach program also includes special notification for individuals who are listed on state

public health registries as hypersensitive to chemical exposure.

4. *Ecological and environmental protections* will be established. These include consultations with FWS concerning endangered and threatened species, notice to beekeepers and the establishment of buffer areas to protect sensitive environmental resources.

This notice is a summary of the information submitted by the Applicant. This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 cite that the Administrator may determine that it is appropriate to publish a notice of receipt of an application for a quarantine exemption request 40 CFR 166.24 (a)(7). Such notice provides for opportunity for public comment on the application.

The official record for this notice, as well as the public version, has been established under docket number [OPP–181065] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official notice record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at: opp-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 in 5/1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–181065]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the U.S. Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests, Emergency exemptions.

Dated: December 1, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 98–32680 Filed 12–8–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6198–7]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance request, 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 of 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 appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1153.06; HESHAP for Equipment Leaks (Fugitive Emission Sources); in 40 CFR Part 61, Subpart V; was approved 08/25/98; OMB No. 2060–0068; expires 08/31/2001.

EPA ICR No. 1125.02: NESHAP for Beryllium Rocket Motor Fuel Firing; in 40 CFR Part 63, Supart D; was approved 10/07/98; OMB No. 2060–0394; expires 10/31/2001.

EPA ICR No. 1446.06; PCBs; Notification and Manifesting of PCB Waste Activities and Records of PCB Storage and Disposal; in 40 CFR Part 761; was approved 10/07/98; OMB No. 2070–0112; expires 10/31/2001.

EPA ICR No. 0328.07; Spill Prevention Control Countermeasures (SPCC) Plans; in 40 CFR Part 112(3), Part 112(4), Part 112(5) and Part 112(7); was approved 10/08/98; OMB No. 2050-0021; expires 12/31/99.

EPA ICR No. 1855.02; Promulgation of Federal Implementation Plan for Arizon-Phoenix Moderate Area PM–10 (includes a Proposed Rule for Vacant Lots, Unpaved Parking Lots, and Unpaved Roads for the Phoenix Area); in 40 CFR Part 52; was approved 10/21/98; OMB No. 2060–0389; expires 10/31/2001.

EPA ICR No. 1708.02; 1999 Drinking Water Infrastructure Needs Survey; was approved 10/29/98; OMB No. 2040–0198; expires 10/31/2001.

EPA ICR No. 0270.39; Revisions to the Existing Variance and Exemptions Rule to Comply With the Safe Drinking Water Act; in 40 CFR Part 141 and 40 CFR Part 142; was approved 09/30/98; OMB No. 2040–0090; expires 09/30/2001.

EPA ICR No. 0959.10; Facility Groundwater Monitoring Requirements; in 40 CFR Part 264, Subpart F and 40 CFR Part 265, Subpart F; was approved 11/15/98; OMB No. 2050–0033; expires 11/30/2001.

EPA ICR No. 0270.40 (New Assigned No. is 1895.01); Final National Primary Drinking Water Regulations; Interim Enhanced Surface Water Treatment Rule; in 40 CFR Part 141; was approved 11/16/98; OMB No. 2040–0205; expires 11/30/2001.

EPA ICR No. 0270.41 (New Assigned No is 1896.01); Final National Primary Drinking Water Regulations; Stage 1 Disinfectants/Disinfection Byproducts Rule; in 40 CFR Part 141; was approved 11/16/98; OMB No. 2040–0204; expires 11/30/2001.

EPA ICR No. 1858.01; Electric Utility Steam Generating Unit Mercury Emissions Information Collection Effort; was approved 11/13/98; OMB No. 2060–0396; expires 06/30/2000.

Extensions of Expiration Dates

EPA ICR No. 1688.02; RCRA Expanded Public Participation; in 40 CFR Part 124 and Part 270; OMB No. 2050–0149; on 11/13/98 OMB extended the expiration date through 01/31/99.

EPA ICR No. 1755.02; Implementation of XL Projects-Regulatory Re-invention Pilot Projects; OMB No. 2010–0026; on 09/29/98 OMB extended the expiration date through 03/31/99.

Transfer Request

EPA ICR No. 1487.06; Cooperative Agreements and Superfund Contracts for Superfund Response Actions; in 40 CFR Part 35, Subpart O; on 11/10/98 OMB transferred this collection's OMB No. from 2010–0020 to OMB No. 2030–0038).

Dated: December 1, 1998.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 98–32564 Filed 12–8–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6198–3]

Proposed CERCLA Prospective Purchaser Agreement for the C&M Plating Company Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposal of CERCLA Prospective Purchaser Agreement for the C&M Plating Company Site.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA''), 42 U.S.C. 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986 (''SARA''), Pubic Law 99–499, notice is hereby given that a proposed prospective purchaser agreement (''PPA'') for the C&M Plating Company Site (''the Site'') located in Roanoke, Indiana, has been executed by REDO, Inc., a local non-profit redevelopment organization. The proposed PPA has been submitted to the Attorney General for approval. The proposed PPA would resolve certain potential claims of the United States under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, against REDO, Inc. The proposed PPA would require REDO, Inc., to pay the United States $2,000 to be applied toward outstanding response costs incurred by the United States in conducting federally funded removal activities at the Site. The Site is not on the NPL, and no further response activities at the Site are anticipated at this time.

DATES: Comments on the proposed PPA must be received by January 8, 1999.

ADDRESSES: A copy of the proposed PPA is available for review at U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please contact Reginald A. Pallesen at (312) 886–0555, prior to visiting the Region 5 office. Comments on the proposed PPA should be addressed to Reginald A. Pallesen, Office of Regional Counsel (C–14J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Reginald A. Pallesen, Associate Regional Counsel, at (312) 886–0555. A 30-day period, commencing on the date of publication of this document, is open for comments on the proposed PPA. Comments should be sent to the addressee identified in this document.

William E. Muno,

Director, Superfund Division, Region 5.

[FR Doc. 98–32565 Filed 12–8–98; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Approved by Office of Management and Budget

December 2, 1998.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection(s) 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. Not withstanding 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.: 3060–0849.

Expiration Date: 10/31/2001.

Title: Commercial Availability of Navigation Devices—CS Docket No. 97–80.

Form No.: N/A.

Estimated Annual Burden: 200 responses; 3266 total annual hours; 0.2 to 40 hours per respondent.

Description: This information is required to ensure that consumers can make informed decisions about the purchase and proper installation of navigation devices.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–32644 Filed 12–8–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Performance Review Board

As required by the Civil Service Reform Act of 1978 (Public Law 95–454), Chairman William E. Kennard appointed the following executives to the Performance Review Board: Richard D. Lee, Renee I. Licht, Mary Beth Richards, David H. Solomon, Thomas S. Tycz.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–32645 Filed 12–8–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

Submission for OMB Review: Comment Request

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Notice of Forms SF–424, SF–270 (LM–6), (LM–8), SF–269a (LM–7), (LM–9), and (LM–3) submitted for extension and review to the Office of Management and Budget.

SUMMARY: This notice announces that six information collection requests contained in the Federal Mediation and Conciliation Service (FMCS) agency forms are coming up for renewal. FMCS submitted to the Office of Management and Budget (OMB) a request for review of six FMCS forms: SF–424 Application for Federal Assistance, SF–270 (LM–6)—Request for Advance or Reimbursement, (LM–8)—Project Performance, SF–269a (LM–7)—Financial Status Report, (LM–9)—FMCS Grants Program Grantee Evaluation Questionnaire, and (LM–3)—Accounting System and Financial Capability Questionnaire. The request seeks OMB approval for a three-year expiration date of Forms SF–424, SF–270 (LM–6), (LM–8), SF–269a (LM–7), (LM–9) and (LM–3) until November 30, 2001. FMCS is soliciting comments on specific aspects of the collection as described below.

DATES: Comments must be submitted on or before January 8, 1999.

ADDRESSES: Submit written comments identified by the appropriate agency form number by mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Office for the Federal Mediation and Conciliation Service, Room 10235, Washington, DC 20503. Copies of the complete agency forms may be obtained from the Labor Management Grants Program at Federal Mediation and Conciliation Service, the Labor Management Grants Program, 2100 K Street, NW, Washington, DC 20427 or by contacting the person whose name appears under the section headed, **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Peter L. Regner, Director of Program Services, Federal Mediation and Conciliation Service, 2100 K Street, NW, Washington, DC 20427. Telephone (202) 606–8181; Fax: (202) 606–4216.

I. Information Collection Requests

FMCS is seeking comments on the following information collection

requests contained in FMCS agency forms.

Agency: Federal Mediation and Conciliation Service.

Form Number: OMB No. 3076–0006.

Type of Request: Reinstatement without change of a currently approved collection without any change in the substance or method of collection.

Affected Entities: Potential applicants/grantees who received our grant application kit. Also, applicants/grantees who have received a grant from FMCS.

Frequency: a. Three of the forms, the SF–424, LM–6, and LM–9 are submitted at the applicant/grantee's discretion.

b. To conduct the quarterly submissions, LM–7/LM–8 forms are used. Less than quarterly reports would deprive FMCS of the opportunity to provide prompt technical assistance to deal with those problems identified in the report.

c. Once per application. The LM–3 is the only form to which a ''similar information'' requirement could apply. That form takes the requirement into consideration by accepting recent audit reports in lieu of applicant completion of items C2 through 9 and items D1 through 3.

Burden: SF–424 Application for Federal Assistance, SF–270 (LM–6) Request for Advance or Reimbursement—30 minutes, (LM–8) Project Performance—60 minutes, SF–269a (LM–7) Financial Status Report—30 minutes, (LM–9) FMCS Grants Program Evaluation Questionnaire—60 minutes, and (LM–3) Accounting System and Financial Capability Questionnaire—60 minutes.

Abstract: Except for the FMCS Forms LM–3 and LM–9, the forms under consideration herein are either required or recommended on OMB Circulars. The two exceptions are non-recurring forms, the former a questionnaire sent only to non-governmental potential grantees and the latter a questionnaire sent only to former grantees for voluntary completion and submission.

The collected information is used by FMCS to determine annual applicant suitability, to monitor quarterly grant project status, and for on-going program evaluation. If the information were not collected, there could be no accounting for the activities of the program. Actual use has been the same as intended use.

II. Request for Comments

The OMB is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimates of the burden of the proposed collection of information;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic collection technologies or other forms of information technology, e.g. permitting electronic and fax submission of responses.

Dated: November 27, 1998.

Richard Barnes,

Acting Director, Federal Mediation and Conciliation Service.

[FR Doc. 98–32663 Filed 12–8–98; 8:45 am]

BILLING CODE 6372–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION

ET date	Trans No.	ET req status	Party name
26–OCT–98	19990006	G	Carolina Mills, Incorporated.
		G	Burlington Industries, Incorporated.
		G	Burlington Industries, Incorporated.
	19990040	G	General Electric Company.
		G	Marquette Medical Systems, Inc..
		G	Marquette Medical Systems, Inc..
	19990056	G	Elan Corporation plc.
		G	Ligand Pharmaceuticals Incorporated.
		G	Ligand Pharmaceuticals Incorporated.
	19990057	G	Ligand Pharmaceuticals Incorporated.
		G	Elan Corporation plc.
		G	Elan International Services, Ltd.
	19990175	G	West Point Stevens, Inc.
		G	Voting Trust of Liebhardt Mills, Inc.
		G	Liebhardt Mills, Inc.
27–OCT–98	19984858	G	ITC Holding Company, Inc.
		G	William G. Jackson.
		G	Cable Alabama Corporation.
	19984864	G	Republic Industries, Inc.
		G	Richard T. Bennett.
		G	Tousley Ford, Inc. & Vandnais Heights Development Company.
	19990002	G	Norcal Mutual Insurance Company.
		G	Pennsylvania Medical Society.
		G	PennMed, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
	19990009	G	Medical Mutual Liability Insurance Society of Maryland.
		G	Pennsylvania Medical Society.
		G	PennMed, Inc.
	19990044	G	SPI Holdings, Inc.
		G	Modtech, Inc.
		G	Modtech, Inc.
	19990106	G	Northwestern Corporation.
		G	Mr. Stephen J. Hellberg.
		G	Vision Communication Services, Inc. & Enhanced Communications.
	19990118	G	Robert Walters.
		G	StaffMark, Inc.
		G	StaffMark, Inc.
	19990119	G	Plum Creek Timber Company, L.P.
		G	Sappi Limited.
		G	SWD Timber II.
	19990137	G	Smiths Industries plc.
		G	Biochem International Inc.
		G	Biochem International Inc.
	19990142	G	Metro Vermogensverwaltungs-gesellschaft mbH & C KG.
		G	Metro Holding AG.
		G	Metro Holding AG.
	19990149	G	Philip F. Anschutz.
		G	Icom CMT Corp.
		G	Icom CMT Corp.
	19990164	G	Legal & General Group Plc.
		G	DORANA.
		G	DORANA.
	19990170	G	MCC Aerospace LLC.
		G	Alinabal Holdings Corporation.
		G	Lamsco.
	19990188	G	Health Care Capital Partners, L.P.
		G	Imagyn Medical Technologies, Inc.
		G	Imagyn Medical Technologies, Inc.
		G	Dacomed Corporation.
		G	Obson Medical Systems, Ltd.
19990202		G	Safeway, Inc.
		G	Dominick's Supermarkets, Inc.
		G	Dominick's Supermarkets, Inc.
28–OCT–98	19984095	G	Memorial Mission Medical Center, Inc.
		G	Sisters of Mercy of the Americas, Regional Comm. of N.C.
		G	St. Joseph's Hospital.
29–OCT–98	19990019	G	Paul G. Allen.
		G	Jeffrey A. and Nancy C. Marcus (husband and wife).
		G	Marcus Cable Properties, Inc.
	19990032	G	MCI WorldCom, Inc.
		G	World Access, Inc.
		G	World Access, Inc.
	19990110	G	Martin Marietta Materials, Inc.
		G	Lafarge S.A.
		G	Redland Stone Products Company.
	19990112	G	UGC Limited.
		G	Ford Motor Company Inc.
		G	Ford Motor Company Inc.
	19990120	G	The Hearst Trust.
		G	Jon S. Kelly.
		G	Kelly Broadcasting Co.
	19990124	G	Compaq Computer Corporation.
		G	General Electric Company.
		G	General Electric Capital Corporation.
	19990129	G	TPG Partners II L.P.
		G	GPA Group plc.
		G	GPA Group plc.
	19990130	G	ABRY Broadcast Partners III, L.P.
		G	Midwest Television Statutory Trust.
		G	WHAG–TV, WFFT–TV, KSVI–TV, KHMT–TV.
	19990145	G	Morgan Stanely Capital Partners III, L.P.
		G	Homeowners Direct Corporation.
		G	Homeowners Direct Corporation.
	19990147	G	Thomas & Betts Corp.
		G	Ilan Bender.
		G	Ocal, Inc.
	19990153	G	Penton Media, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	Mecklermedia Corporation.
		G	Mecklermedia Corporation.
	19990163	G	SCI Systems, Inc.
		G	Intergraph Corporation.
		G	Intergraph Corporation.
	19990174	G	Tenet Healthcare Corporation.
		G	San Diego Hospital Association.
		G	Sharp Temecula Valley d/b/a Sharp Healthcare Murrieta.
	19990177	G	Republic Industries, Inc.
		G	Charles F. Latimer.
		G	Woodfield Ford Sales, Inc.
	19990184	G	Madison Dearborn Partners.
		G	Stone Container Corporation.
		G	Cameo Container Corporation.
30–OCT–98	19990083	G	V.F. Corporation.
		G	Washables, Inc.
		G	Washables, Inc.
	19990086	G	Community Newspaper Holdings, Inc.
		G	Mr. Kenneth R. Thomson, a Canadian citizen.
		G	Thomson Newspapers Inc.
	19990089	G	National Guardian Life Insurance Company.
		G	Kentucky Home Mutual Life Insurance Company.
		G	Kentucky Home Mutual Life Insurance Company.
	19990098	G	NOVA Corporation.
		G	First Union Corporation.
		G	First Union Corporation.
	19990095	G	The Jaguar Fund N.V.
		G	US Airways Group, Inc.
		G	US Airways Group, Inc.
	19990117	G	Prime 66 Partners, L.P.
		G	CD Radio, Inc.
		G	CD Radio, Inc.
	19990125	G	Vivendi, a French company.
		G	Philadelphia Suburban Corporation.
		G	Philadelphia Suburban Corporation.
	19990131	G	America Online, Inc.
		G	Time Warner Inc.
		G	Thrive Partners.
	19990134	G	International Network Services, Inc.
		G	VitalSigns Software, Inc.
		G	VitalSigns Software, Inc., a Delaware corporation.
	19990135	G	Turner Dairies, Inc.
		G	Earl Carter.
		G	Holland Dairies, Inc.
	19990136	G	Warner-Lambert Company.
		G	Glaxo Wellcome plc.
		G	Glaxo Wellcome plc.
	19990140	G	General Motors Corporation.
		G	Suzuki Motor Corporation.
		G	Suzuki Motor Corporation.
	19990183	G	Mr. Ramon Calderon Rivera.
		G	Seaboard Corporation.
		G	Seaboard Bakeries, Inc.
		G	Holsum Bakers of Puerto Rico.
		G	Harinas de Puerto Rico, Inc.
03–NOV–98	19982488	G	Apollo Investment Fund III, L.P.
		G	American Shared Hospital Services.
		G	CuraCare, Inc.
		G	American Shared-CuraCare.
	19990094	G	Evans Deakin Industries Limited.
		G	Australian National Industries Limited.
		G	Australian National Industries Limited.
	19990109	G	TSG Capital Fund II, L.P.
		G	James Hirshfield.
		G	Summit Cablevision, L.P.
	19990139	G	Staples, Inc.
		G	Ivan Allen Company.
		G	Ivan Allen Company.
	19990144	G	Allied Waste Industries, Inc.
		G	Raymond Esposito.
		G	McCauley Enterprises, Inc.
	19990146	G	The Fuji Bank, Limited.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	Dana Corporation.
		G	Dana Commercial Credit Corporation.
	19990150	G	FPIC Insurance Group, Inc.
		G	The Tenere Group, Inc.
		G	The Tenere Group, Inc.
	19990154	G	Waste Management, Inc.
		G	Frank Perrotti, Jr.
		G	Northeast Waste Systems, Inc.
		G	Automated Salvage Transport, Inc.
	19990169	G	HRH Prince Alwaleed Bin Talal Bin Abdulaziz.
		G	Planet Hollywood International, Inc.
		G	Planet Hollywood International, Inc.
	19990176	G	Packaging Holdings, L.L.C.
		G	ARTRA Group Incorporated.
		G	Bagcraft Corporation of America.
	19990179	G	Kingway Financial Services Inc.
		G	Roberto Espin, Jr.
		G	Hamilton Investments, Inc.
	19990181	G	OmniSource Corporation.
		G	Herbert B. Gertler and Marilyn E. Gertler.
		G	Industrial Scrap Corporation.
	19990186	G	Micrel, Inc.
		G	Synergy Seniconductor Corporation.
		G	Synergy Seniconductor Corporation.
	19990187	G	Symatec Corporation.
		G	Quarterdeck Corporation.
		G	Quarterdeck Corporation.
	19990192	G	Thomas O. Hicks.
		G	Host Communications, Inc.
		G	Host Communications, Inc.
	19990193	G	Thomas O. Hicks.
		G	Universal Sports America, Inc.
		G	Universal Sports America, Inc.
	19990198	G	Marmon Holdings, Inc.
		G	Bushwick Iron & Steel Co., Inc.
		G	Bushwick Iron & Steel Co., Inc.
	19990199	G	Brandywine Senior Care, Inc.
		G	Lars Christensen.
		G	Blue Star Health Care Services, Inc.
	19990205	G	Markel Corporation.
		G	Gryphon Holdings Inc.
		G	Gryphon Holdings Inc.
	19990212	G	Centris Group, Inc. (The).
		G	Eureko, B.V.
		G	Seaboard Life Insurance Company, VASA North America, Inc.
	19990217	G	Paul G. Allen.
		G	Lester M. Smith.
		G	Alexander Broadcasting Company.
	19990226	G	General Motors Corporation.
		G	Burns Bros., Inc.
		G	Burns Bros., Inc.
	19990228	G	CGW Southeast Partners III, L.P.
		G	Interfilm Holdings, Inc.
		G	Center Street Capital Partners, L.P.
		G	Center Street Capital Mngt., L.C., Stephens Group, I.
	19990232	G	Citation Corporation.
		G	John C. Iverson.
		G	Custom Products Corporation.
	19990233	G	Harbour Group Investments III, L.P.
		G	John M. Brilbeck.
		G	Southern Heat Exchanger Corporation.
	19990238	G	Aldo A. Croatti.
		G	Manfred Tidor.
		G	Standard Management Corp., Durawear Manufacturing Corp.
		G	Stable Manufacturing Corp.
	19990247	G	William Blair Mezzanine Capital Fund II, L.P.
		G	Donald J. and Patsy L. Williamson.
		G	The Colonel's, Inc.
	19990274	G	Perry Judd's Holdings, Inc.
		G	Thomas G. Colwell.
		G	Heartland Press, Inc.
04–NOV–98	19990065	G	ABC Rail Products Corporation.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	NACO, Inc.
		G	NACO, Inc.
	19990077	G	CMS Energy Corporation.
		G	Gilbert A. Bruciaga.
		G	Bradshaw Gathering System.
	19990078	G	Joseph A. Seher.
		G	ABC Rail Products Corporation.
		G	ABC Rail Products Corporation.
	19990088	G	GATX Corporation.
		G	Marubeni Corporation.
		G	Mieco Inc.
	19990100	G	CMS Energy Corporation.
		G	Dynegy Inc.
		G	Bradshaw Gathering System.
	19990101	G	General Electric Company.
		G	Gilat Satellite Networks, Ltd.
		G	Gilat Satellite Networks, Ltd.
	19990102	G	Gilat Satellite Networks Ltd.
		G	General Electric Company.
		G	GE Capital Spacenet Services, Inc.
	19990123	G	ChoicePoint, Inc.
		G	Thomas C. Lund.
		G	National Credit Audit Corporation.
		G	Customer Database Technologies, Inc.
		G	Customer Development Corporation.
		G	Optimum Graphics Printing, Inc.
		G	CDC Realty, LLC.
		G	Financial Database Services Company.
	19990133	G	CMS Energy Corporation.
		G	Heritage Gas Services, L.L.C.
		G	Heritage Gas Services, L.L.C.
	19990189	G	Canadian Pacific Limited.
		G	Brierley Investments Limited.
		G	ANZDL Management Services (North America) Inc.
		G	Plus jointly owned assets.
	19990190	G	Canadian Pacific Limited.
		G	Vincent Bolore.
		G	ANZDL Management Services (North America) Inc.
	19990252	G	Republic Industries, Inc.
		G	Edward John DeBoer.
		G	Arc Disposal Company, Inc. and E&P Investment Corporation.
	19990253	G	Republic Industries, Inc.
		G	Paul Alan DeBoer.
		G	Arc Disposal Company, Inc. and E&P Investment Corporation.
06–NOV–98	19984538	G	Liberty Financial Companies, Inc.
		G	Societe Generale.
		G	Societe Generale Asset Management Corp.
	19990105	G	General Dynamics Corporation.
		G	NASSCO Holdings Incorporated.
		G	NASSCO Holdings Incorporated.
	19990111	G	Glenn R. Jones.
		G	Tele-Communications, Inc.
		G	Bresnan Communications Company Limited Partnership.
	19990141	G	Harris Corporation.
		G	Intraplex, Inc.
		G	Intraplex, Inc.
	19990234	G	Madison Dearborn Capital Partners II, L.P.
		G	Reiman Publications, L.P.
		G	Reiman Publications, L.P.
	19990239	G	Frank M. Ward.
		G	Carousel Capital Partners, LLC.
		G	IllumElex Corporation.
	19990259	G	Rasminco Limited.
		G	Savage Resources Limited.
		G	Savage Resources Limited.
	19990267	G	Group Maintenance America Corp.
		G	Trinity Contractors, Inc.
		G	Trinity Contractors, Inc.
	19990268	G	Castle Harlan Partners III, L.P.
		G	Luther's Bar-B-Q, Inc.
		G	Luther's Bar-B-Q, Inc.
	19990276	G	Yellow Corporation.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	David Fulkerson.
		G	Action Express, Inc.
	19990277	G	Yellow Corporation.
		G	Daniel Fulkerson.
		G	Action Express, Inc.
	19990278	G	General Motors Corporation.
		G	Donald E. Massey.
		G	Saturn of Plymouth, Inc.
		G	Saturn of Okemos, Inc.
		G	Saturn of Farmington Hills, Inc.
	19990286	G	Bell Microproducts, Inc.
		G	Almo Corporation.
		G	Almo Corporation.
		G	Almo Distributing Pennsylvania, Inc.
		G	Almo Distributing Maryland, Inc.
		G	Almo Distributing Wisconsin, Inc.
		G	Almo Distributing, Inc.
		G	Almo Distributing Minnesota, Inc.
	19990287	G	Grupo Carso, S.A. de C.V.
		G	Continental Aktiengesellschaft.
		G	Continental General Tire, Inc.
	19990288	G	Weyerhaeuser Company.
		G	Mr. Thomas S. Connelly.
		G	Connelly Containers, Inc.
	19990293	G	Leonardo Del Vecchio.
		G	Mitani Corporation.
		G	Spectron, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, contact representatives, Federal Trade Commission, premerger notification office, Bureau of Competition, room 303, Washington, D.C. 20580, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–32656 Filed 12–8–98; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTION GRANTED EARLY TERMINATION

ET date	Trans No.	ET req status	Party name
09–NOV–98	19983303	G	John J. Rigas.
		G	Tele-Media Company of Southeast Florida, Inc.
		G	Tele-Media Company of Southeast Florida, Inc.
	19990282	G	Odyssey Investment Partners Fund, LP.
		G	Celadon Group, Inc.
		G	Celadon Group, Inc.
	19990283	G	General American Mutual Holding Company.
		G	First Data Corporation.
		G	EPBLife Insurance Company.
	19990292	G	Cendant Corporation.
		G	Apollo Investment Fund III, L.P.
		G	NRT Incorporated.
	19990294	G	Allied Waste Industries, Inc.
		G	Geroge Rutigliano.
		G	Rutigliano Paper Stock, Inc.
	19990297	G	Cornerstone Propane Partners, L.P.
		G	Propane Continental, Inc.
		G	Propane Continental, Inc.
	19990301	G	Katy Industries, Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	Limited Liability Company.
		G	Limited Liability Company.
	19990304	G	U.S. Foodservice.
		G	Joseph Webb Foods, Inc.
		G	Joseph Webb Foods, Inc.
	19990305	G	Platinum Software Corporation.
		G	DataWorks Corporation.
		G	DataWorks Corporation.
	19990306	G	VEBA AG.
		G	Michael C. Argyelan.
		G	Whittaker, Clark & Daniels, Inc.
	19990321	G	Spartan Stores, Inc.
		G	Ashcraft's Market, Inc.
		G	Ashcraft's Market, Inc.
	19990341	G	National Express Group PLC.
		G	Leon Robinson, Jr.
		G	Robinson Bus Service, Inc
		G	Maierhofer, Inc.
10–NOV–98	19990126	G	AT&T Corp.
		G	AT&T Corp.
		G	Houston Cellular Telephone Company, L.P.
	19990221	G	Odyssey Investment Partners Fund, LP
		G	Kelso Investment Associates IV, L.P.
		G	TransDigm Holding Company.
	19990251	G	Asif A. Sayeed.
		G	Coventry Health Care, Inc.
		G	Principal Health Care of Illinois, Inc.
	19990275	G	Health Risk Management, Inc.
		G	Oxford Health Plans, Inc.
		G	Oxford Health Plans of PA, Inc.
	19990310	G	Jack Henry & Associates, Inc.
		G	Peerless Group, Inc.
		G	Peerless Group, Inc.
	19990311	G	William Blair Capital Partners VI, L.P.
		G	Inland Steel Industries, Inc.
		G	Inland Engineered Materials Corporation.
	19990324	G	JH. Whitney III, L.P.
		G	Kjell Inge Rokke.
		G	Brooks Sports, Inc.
	19990325	G	American Express Company.
		G	Electronic Data Systems Corporation.
		G	Shamrock ATM Inc.
	19990338	G	Pioneer International Limited.
		G	Roy P. McNeil.
		G	Metro West Ready-Mix, Ind.
	19990339	G	Frank A. and Katherine Argenbright.
		G	Steven C. Kletijan.
		G	Unicco Security Service, Inc.
12–NOV–98	19990156	G	Time Warner Inc.
		G	Time Warner Inc.
		G	Paragon Communications.
	19990195	G	Cisco Systems, Inc.
		G	Lagardere SCA, a French company.
		G	Selsius Systems Inc.
	19990262	G	AT&T Corp.
		G	Vanguard Cellular Systems, Inc.
		G	Vanguard Cellular Systems, Inc.
	19990269	G	Blackstone CCI Capital Partners L.P.
		G	Blackstone CCI Capital Partners L.P.
		G	Sioux Falls Cellular Limited Partnership.
	19990280	G	MarketSpan Corporation d/b/a KeySpan Energy.
		G	Philip Fritze & Sons, Inc.
		G	Philip Fritze & Sons, Inc.
	19990302	G	Bessemer Securities LLC.
		G	Metapath Software International, Inc.
		G	Metapath Software International, Inc.
	19990316	G	ING Groep N.V.
		G	Federal Life Insurance Company.
		G	Life Insurance Company of Illinois.
	19990351	G	Southern Company (The).
		G	Commonwealth Energy System.
		G	Cambridge Electric Light Co., Commonwealth Electric Co.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
	19990352	G	Southern Company (The)
		G	Eastern Utilities Associates.
		G	Montaup Electric Company.
13–NOV–98	19990005	G	Chancellor Media Corporation.
		G	Gregory W. Kunz.
		G	Kunz & Company.
	19990185	G	Naspers Limited.
		G	Hyundia Electronics Industries Co., Ltd., a Korean company.
		G	TV/COM International, Inc.
	19990248	G	Lucent Technologies Inc.
		G	Koninklijke Philips Electronics N.V.
		G	Phillips Consumer Communications L.P.
	19990249	G	Koninklijke Philips Electronic N.V.
		G	Koninklijke Philips Electronic N.V.
		G	Philips Consumer Communication L.P.
16–NOV–98	19990157	G	Deloro Stellite Group Limited.
		G	Conforma Clad Inc.
		G	Conforma Clad Inc.
	19990194	G	Wolseley plc.
		G	Milton Dannelly Law.
		G	Fields and Company of Lubbock, Inc.
	19990289	G	ING Groep N.V.
		G	Investors Financial Group, Inc.
		G	Investors Financial Group, Inc.
	19990296	G	General Motors Corporation.
		G	Jean W. Carlson.
		G	Eastern Massachusetts Real Estate, Inc.
	19990312	G	Jerald Kent.
		G	Charter Communications, Inc.
		G	Charter Communications Group.
	19990313	G	Howard Wood.
		G	Charter Communications Group.
		G	Charter Communications, Inc.
	19990314	G	Barry Babcock.
		G	Charter Communications Group.
		G	Charter Communications, Inc.
	19990332	G	Centennial HealthCare Corporation.
		G	Thomas J. Flatley.
		G	Flatley Rehabiliation & Nursing Centers.
	19990350	G	Louis Elias.
		G	Shoney's Inc.
		G	SHN Properties, LLC, TPI Properies, Inc.
		G	TPI Restaurants, Inc., Shoney's of Michigan, Inc.
	19990358	G	OCM Principal Opportunities, Fund, L.P.
		G	Forcenergy Inc.
		G	Forcenergy Inc.
	19990359	G	Madison Dearborn Capital Partners II, L.P.
		G	Forcenergy Inc.
		G	Forcenergy Inc.
	19990361	G	John H. MacBain and Louise T. Blouin MacBain.
		G	Cendant Corporation.
		G	3012013 Nova Scotia Co., Rapid Distribution Co.
	19990363	G	Estate of Charles A. Sammons.
		G	J. Brian Moran.
		G	Parkway Mortgage, Inc.
		G	Parkway Mortgage, Inc.
		G	Republic Mortgage of Cherry Hill, Inc.
	19990367	G	Chancellor Media Corporation.
		G	Hicks, Muse, Tate & Furst Equity Fund, III, L.P.
		G	Ranger Equity Holdings Corporation.
	19990369	G	International Technology Corporation.
		G	Fluor Corporation.
		G	Fluor Daniel GTI, Inc.
	19990370	G	Ford Motor Company.
		G	Larry Hilcher.
		G	Larry Hilcher Ford, Inc.
	19990371	G	Kroll-O'Gara Company (The).
		G	Laboratory Specialists of America, Inc.
		G	Laboratory Specialists of America, Inc., Oklahoma Corporation.
	19990373	G	NACCO, Inc.
		G	NationsRent, Inc.
		G	The Bode Finn Company.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
	19990374	G	Snyder Communications, Inc.
		G	Paul J. McMahon,
		G	National Sales Services, Inc.
	19990381	G	Warburg, Pincus Investors, L.P.
		G	Children's Broadcasting Corporation.
		G	Children's Radio of Dallas, Inc., Children's Radio of Phoeni.
		G	Children's Radio of New York, Inc.
	19990404	G	United Rentals, Inc.
		G	Michael Watts.
		G	Trench Safety Equipment Corporation.
	19990411	G	Irving Rubenstein.
		G	HA–LO Industries, Inc.
		G	HA–LO Industries, Inc.
	19990412	G	Ralph Rubenstein.
		G	HA–LO Industries, Inc.
		G	HA–LO Industries, Inc.
	19990417	G	HA–LO Industries, Inc.
		G	Ralph Rubenstein.
		G	Premier Promotions and Marketing, Inc.
	19990418	G	HA–LO Industries, Inc.
		G	Irving Rubenstein.
		G	Premier Promotions and Marketing, Inc.
17–NOV–98	19984549	G	MotivePower Industries, Inc.
		G	Fred M. Young, Jr.
		G	Young Radiator Company.
	19990197	G	Windward Capital Associates, L.P.
		G	AEC–Able Engineering Company, Inc.
		G	AEC–Able Engineering Company, Inc.
	19990256	G	Harbour Group Investment III, LP.
		G	Metapoint Partners, Fund–II, L.P.
		G	Wood Structures, Inc.
	19990300	G	Walt Disney Company (The)
		G	Silver Screen Partners IV, L.P.
		G	Disney-Silver Screen IV Joint Venture.
	19990308	G	Waste Connections, Inc.
		G	The Murrey Trust.
		G	American Disposal Company, Inc.
		G	Murrey's Disposal Company, Inc.
		G	Tocoma Recycling Company, Inc.
		G	D.M. Disposal Company, Inc.
	19990309	G	The Murrey Trust.
		G	Waste Connections, Inc.
		G	Waste Connections, Inc.
	19990323	G	Perstorp AB (a Swedish company)
		G	Nycomed Amersham plc
		G	Amersham Pharmacia Biotech Inc.
	19990333	G	Johnson & Johnson.
		G	Mitsubishi Chemical Corporation.
		G	Mitsubishi Chemical Corporation.
	19990365	G	Michael R. Krupp.
		G	Nortek, Inc.
		G	Allied Plywood Corporation.
	19990368	G	Hicks, Muse, Tate & Furst Equity Fund III, L.P.
		G	Chancellor Media Corporation.
		G	Chancellor Media Corporation.
	19990376	G	Gerald W. Schwartz.
		G	International Manufacturing Service, Inc.
		G	International Manufacturing Service, Inc.
	19990377	G	Stewart & Stevenson Services, Inc.
		G	Don L. Chapman.
	19990377	G	Tug Manufacturing Corporation.
	19990384	G	Level One Communications, Inc.
		G	Walter T. Thirion.
		G	Jato Technologies, Inc.
	19990385	G	Walter T. Thirion.
		G	Level One Communications, Inc.
		G	Level One Communications, Inc.
	19990386	G	Software Logistics Corporation dba Logistix.
		G	Massayoshi Son.
		G	SoftBank Content Services, Inc.
	19990393	G	GKN plc.
		G	The Dow Chemical Company.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	Dow-United Technologies Composite Products, Inc.
	19990394	G	GKN plc.
		G	United Technologies Corporation.
		G	Dow-United Technologies Composite Products, Inc.
	19990425	G	Ford Motor Company.
		G	Garff Enterprises, Inc.
		G	Garff Wade, Inc., and Tri-City Motor Co., Inc.
	19990387	G	Elkem ASA.
		G	Airgas, Inc.
		G	American Carbide and Carbon Corporation.
	19990391	G	RWE AG.
		G	The Pearl of Kuwait Real Estate Company.
		G	Baumfolder Corporation.
19–NOV–98	19990266	G	Danisco A/S.
		G	Beck Vanilla Products Co.
		G	Beck Vanilla Products Co.
	19990271	G	OEI International, Inc.
		G	Paulus, Sokolowski and Sartor, Inc.
		G	Paulus, Sokolowski and Sartor, Inc.
	19990303	G	Ohio Casualty Corporation.
		G	American Financial Group, Inc.
		G	Great American Insurance Company.
	19990360	G	Lund International Holdings, Inc.
		G	John W. Jordan, II.
		G	Ventshade Holdings, Inc.
	19990372	G	Triton Cellular Partners, L.P.
		G	Kyle W. Mussman.
		G	BMCT, L.P.
	19990415	G	McLeod USA Incorporated.
		G	Dakota Telecommunications Group, Inc.
		G	Dakota Telecommunications Group, Inc.
	19990416	G	DLJ Merchant Banking Partners, II, L.P.
		G	Daniel D. Stokes,
		G	Eyelets for Industry, Inc.
	19990426	G	Family Golf Centers, Inc.
		G	Peter Munk.
		G	Skate Nation, Inc.
20–NOV–98	19990298	G	Scott A. Blum.
		G	David B. Ingram.
		G	SpeedServe, Inc.
	19990299	G	David B. Ingram.
		G	Scott A. Blum.
		G	Buy Corp.
	19990344	G	Fingerhut Companies, Inc.
		G	TPG Partners II, L.P.
		G	Popular Club Plan, Inc.
	19990392	G	Thyssen Aktiengesellschaft (a German company).
		G	Michael E. Mahoney.
		G	Access Industries, Inc.
	19990421	G	Citadel Communications Corporation.
		G	62nd Street Holdings, L.L.C.
		G	62nd Street Broadcasting of Saginaw. LLC (etal).
	19990430	G	PRIMEDIA Inc.
		G	Peter J. Callahan.
		G	The Sterling/Macfadden Partnership.
	19990431	G	PRIMEDIA, Inc.
		G	Morton Tuller.
		G	The Sterling/Macfadden Partnership.
	19990433	G	Zurich Allied AG.
		G	Superior National Insurance Group, Inc.
		G	Business Insurance Company.
	19990435	G	Rhone Capital LLC.
		G	The Beacon Group III–Focus Value Fund, L.P.
		G	Hollywood Theater Holdings, Inc.
	19990444	G	Insurance Services Office, Inc.
		G	James F. Beedle.
		G	IDR Holdings, Inc.
		G	Insurance Data Resources, Inc.
		G	IDR Statistical Services, Inc.
	19990449	G	CompuDyne Corporation.
		G	Apogee Enterprise, Inc.
		G	Norment Industries, Inc./Norshield Corporation.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
	19990456	G	Iowa Health System.
		G	Trinity Health Systems, Inc.
		G	Trinity Health Systems, Inc.
	19990460	G	Fannie May Holdings, Inc.
		G	Sweet Factory Group, Inc.
		G	Sweet Factory Group, Inc.
	19990469	G	Groupe Danone.
		G	AquaPenn Spring Water Company, Inc.
		G	AquaPenn Spring Water Company, Inc.
	19990478	G	The Seagram Company Ltd.
		G	Frederick W. Field.
		G	Interscope TVT JV
	19990481	G	VNU N.V.
		G	Peter J. Callahan.
		G	Macfadden Trade Publishing, LLC.
	19990504	G	Crestline Capital Corporation.
		G	Host Marriott Corporation.
		G	Host Marriott Corporation.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–32657 Filed 12–8–98; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTION GRANTED EARLY TERMINATION

ET date	Trans No.	ET req status	Party name
15–Oct–98	19984680	G	BWY Corporation.
		G	United States Can Company.
		G	United States Can Company.
	19984715	G	Johns Manville Corporation.
		G	Samuel J. Heyman.
		G	BMCA Insulation Products, Inc.
	19984758	G	CSR Limited.
		G	Standard Sand & Silica Company, a Florida Corporation.
		G	Standard Sand & Silica Company, a Florida Corporation.
	19984770	G	CH–CGH, Inc.
		G	CGH Health Services.
		G	CGH Health Services.
	19984827	G	USFreightways Corporation.
		G	Golden Eagle Group, Inc.
		G	Golden Eagle Group, Inc.
	19990004	G	Hartley D. Peavey.
		G	John Lee.
		G	Crest Audio, Inc.
	19990012	G	HNC Software, Inc.
		G	Open Solutions, Inc.
		G	Open Solutions, Inc.
	19990018	G	Frontenac VII Limited Partnership.
		G	Derlan Industries Limited.
		G	Brenton Engineering Company.
		G	Roberts Polypro, Inc.
	19990026	G	Warren E. Buffett and Susan T. Buffett.
		G	Berkshire Hathaway Inc./General Re Corporation.
		G	Berkshire Hathaway Inc./General Re Corporation.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
	19990027	G	Malcolm G. Chace.
		G	Berkshire Hathaway Inc./General Re Corporation.
		G	Berkshire Hathaway Inc./General Re Corporation.
16–Oct–98	19984469	G	Marsh & McLennan Companies, Inc.
		G	Sedgwick Group plc.
		G	Sedgwick Group plc.
19–Oct–98	19984764	G	Stephen E. Myers.
		G	Providence Media Partners, L.P.
		G	Mark Twain Cablevision Limited Partnership.
	19984834	G	Cornerstone Properties Inc.
		G	William Wilson III.
		G	William Wilson & Associates
	19984835	G	Code, Hennessy & Simmons III, L.P.
		G	Mr. Randolph McCormick, Sr.
		G	Dixie Auto Glass Inc, Capital Glass Inc., Glass Depot Inc.
		G	Dixie Auto Glass Co., Inc.
		G	Dixie Glass Co. of Thibodaux, Inc.
	19984865	G	Allied Waste Industries, Inc.
		G	Gaspare Campo.
		G	Standard Disposal Services, Inc.
	19990007	G	The Manitowoc Company, Inc.
		G	Powerscreen International PLC.
		G	Powerscreen USC, Inc.
	19990023	G	Thayer Equity Investors III, L.P.
		G	Lewis O. Coley, III.
		G	Pacific Circuits, Inc.
	19990028	G	Gleming Companies, Inc.
		G	The Penn Traffic Company.
		G	The Penn Traffic Company.
	19990031	G	William J. Kidd.
		G	Paul A. Keany.
		G	W.F. Wood, Incorporated.
	19990034	G	Phillip Morris Companies, Inc.
		G	Starbucks Corporation.
		G	Starbucks Corporation.
	19990037	G	Minnesota Mining & Manufacturing Company.
		G	Lindsay Stevens.
		G	Ja-Leu, Inc.
	19990038	G	Minnesota Mining & Manufacturing Company.
		G	Christian Stevens.
		G	Ja-Leu, Inc.
	19990046	G	Florida Progress Corporation.
		G	Royce G. Kershaw, Jr.
	19990046	G	Kershaw Manufacturing Company, Inc.
	19990047	G	HydroChem Holding, Inc.
		G	Rollins Investment Fund.
		G	Valley Systems, Inc.
		G	Valley Systems of Ohio, Inc.
	19990048	G	GKN plc.
		G	Anthony Viglione.
		G	Alpine Pressed Metals, Inc.
20–Oct–98	19981697	G	Lafarge, S.A.
		G	Thomas Schmidheiny.
		G	Holnam, Inc.
	19984775	G	Cablevision Systems Corporation.
		G	Clearview Cinema Group, Inc.
		G	Clearview Cinema Group, Inc.
	19984780	G	MedQuist Inc.
		G	The MRC Group, Inc.
		G	The MRC Group, Inc.
	19984841	G	Giant Eagle, Inc.
		G	Reider's, Inc.
		G	Reider's, Inc.
	19984848	G	PartnerRe Ltd.
		G	Credit Suisse Group.
		G	Winterthur Reinsurance Corp. & Winterthur Life Reinsurance.
	19990014	G	Premier Parks Inc.
		G	United Services Automobile Association.
		G	Fiesta Texas Inc.
		G	San Antonio Theme Park, L.P.
	19990053	G	U.S. Foodservice.
		G	Geoffrey M. Haar.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	J.H. Haar & Sons, Inc.
	19990059	G	Isaac Saba Raffoul.
		G	Hoechst Aktiengesellschaft.
		G	Hoechst Aktiengesellschaft.
	19990060	G	Koch Industries, Inc.
		G	Hoechst Aktiengesellschaft.
		G	Hoechst Aktiengesellschaft.
	19990062	G	BCE Inc.
		G	SkyView Media Group Inc.
		G	SkyView Media Group Inc.
	19990063	G	Precision Industrial Automation, Inc.
		G	Robert Bosch Industrietreuhand KG.
		G	Robert Bosch Corporation.
	19990081	G	Leggett & Platt, Incorporated.
		G	Ronald D. Douglas.
		G	Technical Plastics Corporation.
	19990096	G	The Garfield Weston Charitable Foundation.
		G	Harrowston Inc.
		G	SPI Holding Company.
21–Oct–98	199984818	G	Alfred Lerner.
		G	The Browns Holding Trust.
		G	The Browns Holding Trust.
	19984838	G	Unilab Corporation.
		G	Meris Laboratories, Inc. (debtor-in-possession).
		G	Meris Laboratories, Inc. (debtor-in-possession).
	19990029	G	The Nomura Securities Co., Ltd.
		G	Global Interactive Technologies Corporation.
		G	Global Interactive Technologies Corporation.
	19990033	G	LodgeNet Entertainment Corporation.
		G	Global Interactive Technologies Corporation.
		G	Global Interactive Technologies Corporation.
	19990052	G	Jacor Communications, Inc.
		G	ML Media Partners, L.P.
		G	Anaheim Radio Associates.
	19990066	G	The Coastal Corporation.
		G	E.I. duPont de Nemours and Company.
		G	Conoco Inc.
	19990067	G	Rowe Furniture Corporation.
		G	Mitchell S. Gold.
		G	The Mitchell Gold Co.
	19990068	G	Rowe Furniture Corporation.
		G	Robert T. Williams, Jr.
		G	The Mitchell Gold Co.
	19990071	G	Pinnacle Healthcare.
		G	Putnam Center, Inc.
		G	Putnam Hospital Center.
	19990079	G	Griffon Corporation.
		G	Leonard C. Adams.
		G	Adams Bros. Interiors & Cabinets, Inc.
		G	Adams Bros, Interiors of Nevada, Inc.
		G	AB Installations, Inc.
	19990084	G	V.F. Corporation.
		G	Louis Lazarus.
		G	Penn State Textile Manufacturing, Inc.
	19990090	G	Trivest Fund II, Ltd.
		G	Dyno Holdings Corporation.
		G	Dyno Holdings Corporation.
	19990103	G	Gerald W. Schwartz.
		G	Raymond Aspiri.
		G	Tempress, Inc.
	19990104	G	Heinz Prechter.
		G	Raymond Aspiri.
		G	Tempress, Inc.
	19990064	G	Global Private Equity III Limited Partnership.
		G	Pinnacle Automation, Inc.
		G	McHugh Software International, Inc.
	19990108	G	Tyco International Ltd.
		G	William T. Brown.
		G	Midnight Burglar Alarm Systems, Inc.
	19990121	G	AFC Cable Systems, Inc.
		G	Jaako O. Uuranniemi.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	Georgia Pipe Company.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–32658 Filed 12–8–98; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Contract Review Meeting

In accordance with Section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), announcement is made of the following technical review committee to meet during the month of December 1998:

Name: Technical Review Committee on the Agency for Health Care Policy and Research SBIR Topic 010—Tools to Assist Children/Parents Manage Their Chronic Health Needs.

Date and Time: December 14, 1998, 1:00 p.m.–5:00 p.m.

Place: Agency for Health Care Policy and Research Conference Center, 6010 Executive Boulevard, 4th Floor, Conference Room B, Rockville, Maryland, 20852.

This meeting will be closed to the public.

Purpose: The Technical Review Committee's charge is to provide, on behalf of the Agency for Health Care Policy and Research (AHCPR) Contracts Review Committee, recommendations to the Administrator, AHCPR, regarding the technical merit of contract proposals submitted in response to a specific Request for Proposals regarding the AHCPR Research SBIR Topic 010,—Tools to Assist Children/Parents Manage Their Chronic Health Needs, that was published in the Commerce Business Daily on August 27, 1998.

The purpose of these contracts is to fulfill the Agency for Health Care Policy and Research's participation in the Small Business Innovation Research program (SBIR). The Small Business Research and Development Enhancement Act of 1992 requires the agencies of the Public Health Service (PHS), Department of Health and Human Services (HHS), and other federal agencies to reserve 2.5 percent of their current fiscal year extramural budgets for research or research and development for an SBIR program. This legislation is intended to expand and improve the SBIR program; emphasize increased private sector commercialization of technology development through federal SBIR research and development; increase small business participation in federal research and development; and, foster and encourage participation of socially and economically disadvantaged small business concerns and women-owned small business concerns in the SBIR program.

In Phase I of the SBIR program the contractor will determine and report on the scientific, technical and commercial merit and feasibility of the proposed research or research and development efforts including its ability or capacity to carry out its research or R&D proposal, prior to the provision of further Federal support in Phase II.

The U.S. Department of Health and Human Services issued a Solicitation of the Public Health Service for Small Business Innovation Research Contract Proposals (PHS 99–1) for Topic No. 010 to develop ''Tools to Assist Children/Parents Manage Their Chronic Health Needs.'' An estimated 3 to 30 percent of children (between 2.5 and 25 million children ages 0–21) suffer from one or more chronic conditions. In Phase 1, the contractor will determine the factors important to families caring for chronically ill and disabled children. Offerors should propose an approach or combination of approaches to identify the factors. Some approaches to be considered are literature review, focus groups, secondary data analysis and other techniques appropriate for Phase I contracts. Then, the contractor will develop a prototype decision support tool to assist in family care of a child's chronic illness or disease. Prototype tools could include games for children with chronic illness, technologies that link families with the health care system, workbooks, interactive videos, computer-based or Internet based tools. The prototype should focus on a limited group of chronic conditions requiring families to seek care or support.

Agenda: The Committee meeting will be devoted entirely to the technical review and evaluation of contract proposals submitted in response to the above-referenced Request for Proposals.

The Administrator, AHCPR, has made a formal determination that this meeting will not be open to the public. This action is necessary to safeguard confidential proprietary information and personal information concerning individuals associated with the proposals that may be revealed during this meeting, and to protect the free exchange of views, and avoid undue interference with Committee and Department operations. This is in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C., Appendix 2, implementing regulation, 41 CFR 101–6.1023 and procurement regulation, 48 CFR section 315.604(d).

Anyone wishing to obtain information regarding this meeting should contact Sandra Robinson, Center for Quality Measurements & Improvement, Agency for Health Care Policy and Research, 2101 East Jefferson Street, Suite 501, Rockville, Maryland, 20852, telephone (301) 594–1703.

Dated: December 2, 1998.

John M. Eisenberg,

Administrator.

[FR Doc. 98–32669 Filed 12–8–98; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Contract Review Meeting

In accordance with Section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), announcement is made of the following technical review committee to meet during the month of December 1998:

Name: Technical Review Committee on the Agency for Health Care Policy and Research SBIR Topic 011—''Internet-Based Decision Support for Health Related Quality of Life Instruments.''

Date and Time: December 14, 1998, 9:00 a.m.–12:00 p.m.

Place: Agency for Health Care Policy and Research, Conference Center, Conference Room B, 6010, Executive Boulevard, 4th Floor, Rockville, Maryland 20852.

This meeting will be closed to the public.

Purpose: The Technical Review Committee's charge is to provide, on behalf of the Agency for Health Care Policy and Research (AHCPR) Contracts Review Committee, recommendations to the Administrator, AHCPR, regarding the technical merit of contract proposals submitted in response to a specific Request for Proposals regarding the SBIR Topic 011, Internet-Based Decision Support for Health Related Quality of Life Instruments, that was published in the Commerce Business Daily on August 27, 1998.

One purpose of these contracts is to fulfill the Agency for Health Care Policy and Research's participation in the Small Business Innovation Research program (SBIR). The Small Business Research and Development Enhancement Act of 1992 requires the agencies of the Public Health Service (PHS), Department of Health and Human Services (HHS), and other federal agencies to reserve 2.5 percent of their current fiscal year extramural budgets for research or research and development for an SBIR program. The legislation is intended to

expand and improve the SBIR program; emphasize increased private sector commercialization of technology developed through federal SBIR research and development; increase small business participation in federal research and development; and, foster and encourage participation of socially and economically disadvantaged small business concerns and women-owned small business concerns in the SBIR program.

In Phase I of the SBIR program the contractor will address and report on the scientific, technical and commercial merit and feasibility of its proposed research or research and development efforts and its capacity to perform the proposed work prior to the provision of further Federal support in Phase II.

The U.S. Department of Health and Human Services issued a Solicitation of the Public Health Service for SBIR Contract Proposals (PHS 99–1) for Topic No. 011 to develop ''Internet-Based Decision Support for Health Related Quality of Life Instruments''. One of the most important achievements springing from outcomes and effectiveness research in the past two decades is the recognition by the scientific and clinical communities of the essential role of the patients' perspective in assessing their own health and functioning. This conceptual advance has stimulated a proliferation in the number and applications of patient-based ''health-related quality of life'' (HRQL) measures and assessments tools. The proposed projects are to produce a world wide web (WWW) based software program that functions as a decision support tool and provides scientific guidance to researchers and clinical decision-makers in the design, evaluation and implementation of HRQL assessments. Specifically, in the Phase I application, these projects will first design a front-end web-based query application capable of retrieving information, through a web server and a query server, from a back-end database engine. The query systems will perform interactive keyword searches against various categories of data elements with cross-linked information entries at various levels of specificity.

Further, these web client applications will be platform-independent, such as those written as Java applets, to facilitate access to the knowledge base from different computer operating systems. As a prerequisite, these projects will either have direct access to existing public or proprietary HRQL knowledge bases or will have to build new databases containing a systematic review of HRQL instruments and applications.

Agenda: The Committee meeting will be devoted entirely to the technical review and evaluation of contract proposals submitted in response to the above-described Request for Proposals.

The Administrator, AHCPR, has made a formal determination that this meeting will not be open to the public. This action is necessary to safeguard confidential proprietary information and personal information concerning individuals associated with the proposals that may be revealed during this meeting, and to protect the free exchange of views, and avoid undue interference with Committee and Department operations. This is in accordance with section 10(d) of the Federal Advisory Committee Act 5, U.S.C., Appendix 2, implementing regulations, 41 CFR 101–6.1023 and procurement regulations, 48 CFR section 315.604(d).

Anyone wishing to obtain information regarding this meeting should contact Yen-Pin Chiang, Center for Outcomes and Effectiveness Research, 6010 Executive Boulevard, Suite 300, Rockville, Maryland 20852, (301) 594–4035.

Dated: December 2, 1998.

John M. Eisenberg,

Administrator.

[FR Doc. 98–32670 Filed 12–8–98; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Investigational Biological Product Trials; Procedure to Monitor Clinical Hold Process; Meeting of Review Committee and Request for Submissions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the 1999 meetings of the clinical hold review committee, which reviews the clinical holds that the Center for Biologics Evaluation and Research (CBER) has placed on certain investigational biological product trials. FDA is inviting any interested biological product company to use this confidential mechanism to submit to the committee for its review the name and number of any investigational biological product trial placed on clinical hold during the past 12 months that the company wants the committee to review.

DATES: The meetings will be held on February 9, 1999; May 11, 1999; August 10, 1999; and November 9, 1999. Biological product companies may submit review requests for the February meeting by January 5, 1999; for the May meeting by March 30, 1999; for the August meeting by June 29, 1999; and for the November meeting by September 28, 1999.

ADDRESSES: Submit clinical hold review requests to Amanda Bryce Norton, FDA Chief Mediator and Ombudsman, Office of the Commissioner (HF–7), Food and Drug Administration, 5600 Fishers Lane, rm. 14–105, Rockville, MD 20857, 301–827–3390.

FOR FURTHER INFORMATION CONTACT: Stephen M. Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: FDA's regulations in part 312 (21 CFR part 312) provide procedures that govern the use of investigational new drugs and biologics in human subjects. If FDA determines that a proposed or ongoing study may pose significant risks for human subjects or is otherwise seriously deficient, as discussed in the investigational new drug regulations, it may order a clinical hold on the study. The clinical hold is one of FDA's primary mechanisms for protecting subjects who are involved in investigational new drug or biologic trials. Section 312.42 describes the grounds for ordering a clinical hold.

A clinical hold is an order that FDA issues to a sponsor to delay a proposed investigation or to suspend an ongoing investigation. The clinical hold may be ordered on one or more of the investigations covered by an investigational new drug application (IND). When a proposed study is placed on clinical hold, subjects may not be given the investigational drug or biologic as part of that study. When an ongoing study is placed on clinical hold, no new subjects may be recruited to the study and placed on the investigational drug or biologic, and patients already in the study should stop receiving therapy involving the investigational drug or biologic unless FDA specifically permits it.

When FDA concludes that there is a deficiency in a proposed or ongoing clinical trial that may be grounds for ordering a clinical hold, ordinarily FDA will attempt to resolve the matter through informal discussions with the sponsor. If that attempt is unsuccessful, a clinical hold may be ordered by or on behalf of the director of the division that is responsible for the review of the IND.

FDA regulations in § 312.48 provide dispute resolution mechanisms through which sponsors may request reconsideration of clinical hold orders. The regulations encourage the sponsor to attempt to resolve disputes directly with the review staff responsible for the review of the IND. If necessary, the sponsor may request a meeting with the review staff and management to discuss the clinical hold.

CBER began a process to evaluate the consistency and fairness of practices in ordering clinical holds by instituting an oversight committee to review clinical holds (see 61 FR 1033, January 11, 1996). CBER held its first clinical hold review committee meeting on May 17,

1995, and plans to conduct further quality assurance oversight of the IND process. The review procedure of the committee is designed to afford an opportunity for a sponsor who does not wish to seek formal reconsideration of a pending clinical hold to have that clinical hold considered ''anonymously.'' The committee consists of senior managers of CBER, a senior official from the Center for Drug Evaluation and Research, and the FDA Chief Mediator and Ombudsman.

Clinical holds to be reviewed will be chosen randomly. In addition, the committee will review some of the clinical holds proposed for review by biological product sponsors. In general, a biological product sponsor should consider requesting review when it disagrees with FDA's scientific or procedural basis for the decision.

Requests for committee review of a clinical hold should be submitted to the FDA Chief Mediator and Ombudsman, who is responsible for selecting clinical holds for review. The committee and CBER staff, with the exception of the FDA Chief Mediator and Ombudsman, are never advised, either in the review process or thereafter, which of the clinical holds were randomly chosen and which were submitted by sponsors. The committee will evaluate the selected clinical holds for scientific content and consistency with FDA regulations and CBER policy.

The meetings of the oversight committee are closed to the public because committee discussions deal with confidential commercial information. Summaries of the committee deliberations, excluding confidential commercial information, may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. If the status of a clinical hold changes following the committee's review, the appropriate division will notify the sponsor.

For each meeting, FDA invites biological product companies to submit to the FDA Chief Mediator and Ombudsman the name and IND number of any investigational biological product trial that was placed on clinical hold during the past 12 months that they want the committee to review. Submissions should be made by January 5, 1999, for the February meeting; by March 30, 1999, for the May meeting; by June 29, 1999, for the August meeting; and by September 28, 1999, for the November meeting to Amanda Bryce Norton, FDA Chief Mediator and Ombudsman (address above).

Dated: December 1, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–32643 Filed 12–8–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–9002–N]

RIN 0938–AI13

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—Second Quarter, 1998

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

ACTION: Notice.

SUMMARY: This notice lists HCFA manual instructions, substantive and interpretive regulations, and other **Federal Register** notices that were published during April, May, and June of 1998 that relate to the Medicare and Medicaid programs. It also identifies certain devices with investigational device exemption numbers approved by the Food and Drug Administration that may be potentially covered under Medicare.

Section 1871(c) of the Social Security Act requires that we publish a list of Medicare issuances in the **Federal Register** at least every 3 months. Although we are not mandated to do so by statute, for the sake of completeness of the listing, we are including all Medicaid issuances and Medicare and Medicaid substantive and interpretive regulations (proposed and final) published during this timeframe.

FOR FURTHER INFORMATION CONTACT:

Bridgett Wilhite, (410) 786–5248 (For Medicare instruction information).

Betty Stanton, (410) 786–3247 (For Medicaid instruction information).

Sharon Hippler, (410) 786–4633 (For Food and Drug Administration-approved investigational device exemption information).

Kristy Nishimoto, (410) 786–8517 (For all other information).

SUPPLEMENTARY INFORMATION:

I. Program Issuances

The Health Care Financing Administration (HCFA) is responsible for administering the Medicare and Medicaid programs, which pay for health care and related services for 38 million Medicare beneficiaries and 36 million Medicaid recipients. Administration of these programs involves (1) providing information to Medicare beneficiaries and Medicaid recipients, health care providers, and the public, and (2) effective communications with regional offices, State governments, State Medicaid Agencies, State Survey Agencies, various providers of health care, fiscal intermediaries and carriers that process claims and pay bills, and others. To implement the various statutes on which the programs are based, we issue regulations under the authority granted the Secretary under sections 1102, 1871, and 1902 and related provisions of the Social Security Act (the Act) and also issue various manuals, memoranda, and statements necessary to administer the programs efficiently.

Section 1871(c)(1) of the Act requires that we publish in the **Federal Register** at least every 3 months a list of all Medicare manual instructions, interpretive rules, and guidelines of general applicability not issued as regulations. We published our first notice June 9, 1988 (53 FR 21730). Although we are not mandated to do so by statute, for the sake of completeness of the listing of operational and policy statements, we are continuing our practice of including Medicare substantive and interpretive regulations (proposed and final) published during the 3-month time frame.

II. How to Use the Addenda

This notice is organized so that a reader may review the subjects of all manual issuances, memoranda, substantive and interpretive regulations, or Food and Drug Administration-approved investigational device exemptions published during the timeframe to determine whether any are of particular interest. We expect it to be used in concert with previously published notices. Those unfamiliar with a description of our Medicare manuals may wish to review Table I of our first three notices (53 FR 21730, 53 FR 36891, and 53 FR 50577) and the notice published March 31, 1993 (58 FR 16837). Those desiring information on the Medicare Coverage Issues Manual may wish to review the August 21, 1989 publication (54 FR 34555).

To aid the reader, we have organized and divided this current listing into five addenda. Addendum I lists the publication dates of the most recent quarterly listings of program issuances.

Addendum II identifies previous **Federal Register** documents that contain a description of all previously

published HCFA Medicare and Medicaid manuals and memoranda.

Addendum III lists for each of our manuals or Program Memoranda, a HCFA transmittal number unique to that instruction and its subject matter. A transmittal may consist of a single instruction or many. Often it is necessary to use information in a transmittal in conjunction with information currently in the manuals.

Addendum IV lists all substantive and interpretive Medicare and Medicaid regulations and general notices published in the **Federal Register** during the quarter covered by this notice. For each item, we list the date published, the **Federal Register** citation, the parts of the Code of Federal Regulations (CFR) that have changed (if applicable), the agency file code number, the title of the regulation, the ending date of the comment period (if applicable), and the effective date (if applicable).

On September 19, 1995, we published a final rule (60 FR 48417) establishing in regulations at 42 CFR 405.201 *et seq.* that certain devices with an investigational device exemption approved by the Food and Drug Administration and certain services related to those devices may be covered under Medicare. It is HCFA's practice to announce in this quarterly notice all investigational device exemption categorizations, using the investigational device exemption numbers the Food and Drug Administration assigns. Addendum V includes listings of the Food and Drug Administration-approved investigational device exemption numbers that have been approved or revised during the quarter covered by this notice. The listings are organized according to the categories to which the device numbers are assigned (that is, Category A or Category B, and identified by the investigational device exemption number).

III. How To Obtain Listed Material

A. Manuals

An individual or organization interested in routinely receiving any manual and revisions to it may purchase a subscription to that manual. Those wishing to subscribe should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following addresses:

Superintendent of Documents, Government Printing Office, ATTN: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954, Telephone (202) 512–1800, Fax number (202) 512–2250 (for credit card orders); or

National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161, Telephone (703) 487–4630.

In addition, individual manual transmittals and Program Memoranda listed in this notice can be purchased from NTIS. Interested parties should identify the transmittal(s) they want. GPO or NTIS can give complete details on how to obtain the publications they sell. Additionally, all manuals are available at the following Internet address: http://www.hcfa.gov/pubforms/progman.htm.

B. Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. Interested individuals may purchase individual copies or subscribe to the **Federal Register** by contacting the GPO at the address given above. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

The **Federal Register** is also available on 24x microfiche and as an online database through GPO Access. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su_docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then log in as guest (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then log in as guest (no password required).

C. Rulings

We publish rulings on an infrequent basis. Interested individuals can obtain copies from the nearest HCFA Regional Office or review them at the nearest regional depository library. We have, on occasion, published rulings in the **Federal Register**. In addition, rulings, beginning with those released in 1995, are available online, through the HCFA Home Page. The Internet address is http://www.hcfa.gov/regs/rulings.htm.

D. HCFA's Compact Disk-Read Only Memory (CD–ROM)

Our laws, regulations, and manuals are also available on CD–ROM, which may be purchased from GPO or NTIS on a subscription or single copy basis. The Superintendent of Documents list ID is HCLRM, and the stock number is 717–139–00000–3. The following material is on the CD–ROM disk:

- Titles XI, XVIII, and XIX of the Act.
- HCFA-related regulations.
- HCFA manuals and monthly revisions.
- HCFA program memoranda.

The titles of the Compilation of the Social Security Laws are current as of January 1, 1995. (Updated titles of the Social Security Laws are available on the Internet at http://www.ssa.gov/OP_Home/ssact/comp-toc.htm.) The remaining portions of CD–ROM are updated on a monthly basis.

Because of complaints about the unreadability of the Appendices (Interpretive Guidelines) in the State Operations Manual (SOM), as of March 1995, we deleted these appendices from CD–ROM. We intend to re-visit this issue in the near future, and, with the aid of newer technology, we may again be able to include the appendices on CD–ROM.

Any cost report forms incorporated in the manuals are included on the CD–ROM disk as LOTUS files. LOTUS software is needed to view the reports once the files have been copied to a personal computer disk.

IV. How To Review Listed Material

Transmittals or Program Memoranda can be reviewed at a local Federal Depository Library (FDL). Under the FDL program, government publications are sent to approximately 1400 designated libraries throughout the United States. Interested parties may examine the documents at any one of the FDLs. Some may have arrangements to transfer material to a local library not designated as an FDL. To locate the nearest FDL, contact any library.

In addition, individuals may contact regional depository libraries, which receive and retain at least one copy of most Federal government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library. Superintendent of Documents numbers for each HCFA publication are shown in Addendum III, along with the HCFA publication and transmittal numbers. To help FDLs locate the instruction, use the Superintendent of Documents number, plus the HCFA transmittal number. For example, to find the Hospital Manual,

(HCFA Pub. 10) transmittal entitled ''Claims Processing Timeliness Requirements,'' use the Superintendent of Documents No. HE 22.8/2 and the HCFA transmittal number 729.

V. General Information

It is possible that an interested party may have a specific information need and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing information contact persons to answer general questions concerning these items. Copies are not available through the contact persons. Copies can be purchased or reviewed as noted above.

Questions concerning Medicare items in Addendum III may be addressed to Bridget Wilhite, Office of Communications and Operations Support, Division of Regulations and Issuances, Health Care Financing Administration, Telephone (410) 786–5248.

Questions concerning Medicaid items in Addendum III may be addressed to Betty Stanton, Center for Medicaid State Operations, Policy Coordination and Planning Group, Health Care Financing Administration, S2–26–13, 7500 Security Boulevard, Baltimore, MD 21244–1850, Telephone (410) 786–3247.

Questions concerning Food and Drug Administration-approved investigational device exemptions may be addressed to Sharon Hippler, Office of Clinical Standards and Quality, Coverage and Analysis Group, Health Care Financing Administration, C4–11–04, 7500 Security Boulevard, Baltimore, MD 21244–1850, Telephone (410) 786–4633.

Questions concerning all other information may be addressed to Kristy Nishimoto, Office of Communications and Operations Support, Division of Regulations and Issuances, Health Care Financing Administration, C5–13–07, 7500 Security Boulevard, Baltimore, MD 21244–1850, Telephone (410) 786–8517.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, Program No. 93.774, Medicare—Supplementary Medical Insurance Program, and Program No. 93.714, Medical Assistance Program)

Dated: November 24, 1998.

Pamela J. Gentry,

Director, Office of Communications and Operations Support.

Addendum I

This addendum lists the publication dates of the most recent quarterly listings of program issuances.

November 3, 1997 (62 FR 59358)
November 21, 1997 (62 FR 62325)
June 4, 1998 (63 FR 30499)
August 11, 1998 (63 FR 42857)
September 16, 1998 (63 CFR 49598)

Addendum II

Description of Manuals, Memoranda, and HCFA Rulings

An extensive descriptive listing of Medicare manuals and memoranda was published on June 9, 1988, at 53 FR 21730 and supplemented on September 22, 1988, at 53 FR 36891 and December 16, 1988, at 53 FR 50577. Also, a complete description of the Medicare Coverage Issues Manual was published on August 21, 1989, at 54 FR 34555. A brief description of the various Medicaid manuals and memoranda that we maintain was published on October 16, 1992, at 57 FR 47468.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS

[April 1998 through June 1998]

Trans. No.		Manual/subject/publication No.
		Intermediary Manual Part 2—Audits, Reimbursement Program Administration (HCFA Pub. 13–2) (Superintendent of Documents No. HE 22.8/6–2)
411	•	List of MR Codes, Categories, and Conversion Factors.
		Intermediary Manual Part 3—Claims Process (HCFA Pub. 13–3) (Superintendent of Documents No. HE 22.8/6)
1737	•	This transmittal number will not be used.
1738	•	Provider Electronic Billing File and Records Formats. Alphabetic Listings of Data Elements.
1739	•	Electronic Media Claims. ANSI ASC X12 837 Health Care Claim Transaction Set. Electronic UB–92 Change Request Procedures. Electronic UB–92 Change Request Forms. Millennium Ready Free Billing Software. Millennium Readiness. Paper Bills
1740	•	Provider Access to Limited Eligibility Data. Eligibility Data Available.
1741	•	Electronic Data Interchange Enrollment Form.
1742	•	Payment for Blood Clotting Factor. Administered to Hemophilia Inpatients.
1743	•	Provider Electronic Billing File and Record Formats.
1744	•	Claims Processing Timeliness.
1745	•	Corrective Actions. Withholding Payment for Payable Claims. Cases Referred to and Accepted by Office of Investigations. Law Enforcement Agrees There is Fraud, but Declines the Case Because it Does Not Meet Criteria. Overpayment Recoupment in Potential Fraud Cases. Model Suspension Letter.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[April 1998 through June 1998]

Trans. No.		Manual/subject/publication No.
1746	•	Bill Review for Partial Hospitalization Services Provided in Community Mental Health Centers.
1747	•	Review of Form HCFA–1450 for Inpatient and Outpatient Bills.
		Provider Electronic Billing File and Record Formats.
		Alphabetic Listings of Data Elements.
		Carriers Manual
		Part 2—Program Administration
		(HCFA Pub. 14–2)
		(Superintendent of Documents No. HE 22.8/7–3)
137	•	Functional Standards for Claims Processing Operations.
138	•	Functional Standards for Claims Processing Operations.
		Carriers Manual
		Part 3—Claims Process
		(HCFA Pub. 14–3)
		(Superintendent of Documents No. HE 22.8/7)
1597	•	Requirements for Processing Electronic Media Claims.
		Establishing a System to Process Electronic Media Claims.
		Standard Electronic Formats.
		835 and National Standard Format Health Care Claim Payment/Advice Transactions.
		Medicare Standard PC-Print-B Software.
		National Standard Format Maintenance Procedures.
		Paper Remittance Notice.
1598	•	Jurisdiction of Requests for Payment.
		Area Carrier—Physician's Services.
1599	•	Contractor Millennium Contingency Plan.
		Millennium Ready Free Billing Software.
1600	•	Electronic Data Interchange Enrollment Form.
1601	•	HCPCS Codes.
1602	•	Medicare Physician Fee Schedule Database 1998 File Layout.
		Medicare Physician Fee Schedule Database Status Indicators.
1603	•	Simplified Roster Bills.
1604	•	Postpayment Review of Claims Denial of Payment.
		Suspension of Payment.
		Overpayment Recoupment.
		Referral to State Agencies or Other Organizations.
		Model Suspension of Payment Letters.
1605	•	Who May Be Paid Benefits.
		Benefit Checks.
		Additional Benefits Payable Because Prior Determination Revised.
		Death of Enrollee or Assignee Before Claim is Settled.
1606	•	Otologic Evaluations.
		Allergy Testing and Immunotherapy.
		Evaluation/Treatment of Speech Language, Voice, Communication, and/or Auditory Processing, Including Evaluating Aural Rehabilitation Status of Providing Aural Rehabilitation Services.
		Physical Therapy/Occupational Therapy Provided by Physicians and Physician Employees.
		Method for Computing Fee Schedule Amount.
		Physicians' Services Furnished on Day of Dialysis.
		Inpatient Dialysis on Same Date As Evaluation and Management.
		Consultation Versus Visit.
		1998 Geographic Practice Cost Indices by Medicare Carrier and Locality.
1607	•	This transmittal corrects pagination error in Transmittal 1597 dated April 1998.
1608	•	Integumentary System.
		Program Memorandum
		Intermediaries
		(HCFA Pub. 60A)
		(Superintendent of Documents No. HE 22.8/6–5)
A–98–10	•	Year 2000 Update Pages for the Accredited Standards Committee X12 837 Version 3051 Implementations 3A.01 and 1A.C1 Institutional Claim/Coordination of Benefits.
A–98–11	•	Extension of Due Date for Skilled Nursing Facility Providers Utilizing the HCFA Free Software to File Form HCFA–2540–96 Cost Reports.
A–98–12	•	Interim Rate Changes Due to the Elimination of the Formula Driven Overpayment.
A–98–13	•	Review of Home Health Agency Related Businesses.
A–98–14	•	Billing Requirements for Claims With Dates of Service on or After April 1, 1998, for Oral Anti-Nausea Drugs as Full Therapeutic Replacements for Intravenous Dosage Forms as Part of a Cancer Chemotherapeutic Regimen.
A–98–15	•	Policy Clarification: Provider-Based Designation.
A–98–16	•	Coverage and Claims Processing for Prospective Payment for Skilled Nursing Facilities—The Balance Budget Act of 1997.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[April 1998 through June 1998]

Trans. No.	Manual/subject/publication No.
A–98–17	• Clarification of Provider Cost Report Filing Requirements.
A–98–18	• Revised Medicare Bad Debt Treatment for Qualified Medicare Beneficiaries.
A–98–19	• Managed Care Electronic Data Interchange Enrollment Form.
A–98–20	• Claims Processing For Prospective Payment for Skilled Nursing Facilities—The Balanced Budget Act of 1997.
	Program Memorandum Carriers (HCFA Pub. 60B) (Superintendent of Documents No. HE 22.8/6–5)
B–98–12	• Private Contracts Between Beneficiaries and Physicians/Practitioners.
B–98–13	• Temporary National HCPCS Code.
B–98–14	• Year 2000 Update Changes to the Part B ASC X12N 270/271 Version 3051 Implementation for the Health Care Eligibility Benefit Inquiry and Response.
B–98–15	• Billing for the Technical Component of a Laboratory Test.
B–98–16	• Screening Pap Smear and Pelvic Examinations—The Balanced Budget Act of 1997.
B–98–17	• Durable Medical Equipment Regional Carrier Instructions to Implement Balanced Budget Act of 1997 Provisions, § 4105, to Provide Expanded Coverage of Blood Glucose Monitors and Testing Strips for all Diabetics—Implement July 1, 1998.
B–98–18	• Durable Medical Equipment Regional Carrier Instructions for Denying Claims and Recovering Overpayments for Prescription Drugs Billed and/or Paid to Suppliers Not Licensed to Dispense Prescription Drugs.
B–98–19	• Change to Health Insurance Claim Form HCFA–1500 Instructions for Processing Physician Claims in Global Payment Systems.
B–98–20	• Changes to the 1998 Medicare Physician Fee Schedule Database.
B–98–21	• Notification of Updates to the X12 835 3051.4B and National Standard Format Version 2.01.
B–98–22	• Change in Screening Mammography Coverage.
B–98–23	• Health Professional Shortage Area Bonus Payment Clarification.
B–98–24	• Carrier Updating of the International Classification of Diseases, Ninth Revision, Clinical Modification.
	Program Memorandum Intermediaries/Carriers (HCFA Pub. 60A/B) (Superintendent of Documents No. HE 22.8/6–5)
AB–98–11	• Contractor Codes for Processing Centers of Excellence Demonstration Claims.
AB–98–12	• New Waived Tests.
AB–98–13	• Payments for Physicians Services Affected by Global Payment Demonstrations.
AB–98–14	• Claims Processing Instructions for the National Institutes of Health National Emphysema Treatment Trial.
AB–98–15	• Increased Medicare Payment and Billing Requirements for Nurse Practitioners, Physician Assistants, and Clinical Nurse Specialists— Balanced Budget Act of 1997.
AB–98–16	• Medicare Secondary Payer Denial Indicator and the Source Code Changes.
AB–98–17	• Provider Notification of Millennium Instructions for Claims-Related Standards.
AB–98–18	• Consolidated Billing for Skilled Nursing Facilities.
AB–98–19	• Implementation of Court Order in National Medical Care v. Shalala.
AB–98–20	• This transmittal number will not be used.
AB–98–21	• This transmittal number will not be used.
AB–98–22	• Temporary Codes Established for Screening Pap Smears by Automated Thin Layer Preparation Method.
AB–98–23	• HCFA–1522, Monthly Contractor Financial Report, Reconciliation.
AB–98–24	• Provider Overpayment Recovery/Physicians Supplier Overpayment Recovery Systems Overpayments Transferred to the Debt Collection Center for Cross Servicing.
AB–98–25	• New Waived Tests.
AB–98–26	• Current Status of Medicare Program Memoranda and Letters Issued Before Calendar Year 1998.
AB–98–27	• Current Status of Medicare Program Memoranda and Letters Issued Before Calendar Year 1998.
AB–98–28	• Grace Period for Deleted Automated Multi-Channel Tests—Clarification of Program Memorandum AB–97–17.
AB–98–29	• Notice of New Interest Rate for Medicare Overpayments and Underpayments.
AB–98–30	• Suppression of Notice of Utilization, Explanation of Medicare Benefits, and Medicare Summary Notices for Certain Claim Types—Implementation February 1998.
AB–98–31	• Clarification of Program Memorandum A–97–8 (July 1997) and Program Memorandum B–98–4 (January 1998)—Medicare Summary Notice Instructions.
	State Operations Manual Provider Certification (HCFA Pub. 7) (Superintendent of Documents No. HE 22.8/12)
2	• Background. Interpretative Guidelines and Investigative Procedures for Responsibilities of Medicare Participating Hospitals in Emergency Cases.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[April 1998 through June 1998]

Trans. No.		Manual/subject/publication No.
		Program Memorandum Medicaid State Agencies (HCFA Pub. 17) (Superintendent of Documents No. HE 22.8/6.5)
98–1	•	Title XIX of the Social Security Act, Payment of Medicare Part B Premiums.
98–2	•	Current Status of Medicaid Program Memoranda and Action Transmittals Issued Before Calendar Year 1988
		Peer Review Organization Manual (HCFA Pub. 19) (Superintendent of Documents No. HE 22.8/8–15)
65	•	Interaction with Beneficiary Groups. Evaluation.
		Hospital Manual (HCFA Pub. 10) (Superintendent of Documents No. HE 22.8/2)
728	•	Payment for Blood Clotting Factor Administered to Hemophilia Inpatients.
729	•	Claims Processing Timeliness Requirements.
		Skilled Nursing Facility Manual (HCFA Pub. 12) (Superintendent of Documents No. HE 22.8/3)
353	•	Billing for Mammography Screening.
		End Stage Renal Disease Network Organizations Manual (HCFA Pub. 81) (Superintendent of Documents No. HE 22.9/4)
6	•	Authority. Network's Role Prior to Initiating Sanction Recommendation. Written Documentation Requirements for Sanction Recommendation. Forwarding Sanction Recommendation to Appropriate Regional Office. Project Officer's Role in Sanction Procedures. Regional Office Role in Notice and Appeal Rights. Duration and Removal of Alternative Sanction. Quality of Care Referrals.
		Outpatient Physical Therapy, Comprehensive Outpatient Rehabilitation Facility, and Community Mental Health Center Manual (HCFA Pub. 9) (Superintendent of Documents No. HE 22.8/9)
1	•	Outpatient Physical Therapy, Comprehensive Outpatient Rehabilitation Facility, and Community Mental Health Center Manual—First Publication.
2	•	Billing Instructions for Partial Hospitalization Services Provided in Community Mental Health Centers. Pneumococcal Pneumonia Influenza Virus and Hepatitis B Vaccines.
		Coverage Issues Manual (HCFA Pub. 6) (Superintendent of Documents No. HE 22.8/4)
104	•	Cochlear Implantation.
105	•	Cytogenetic Studies.
		Provider Reimbursement Manual—Part 1 (HCFA pub. 15–1) (Superintendent of Documents No. HE 22.8/4)
403	•	Principle. Prevailing Salary. Standard Travel Allowance. Optional Travel Allowance for Home Health Agencies and Other Providers. Guideline Application. Application of Travel Allowance. Identification of Services Furnished By Outside Suppliers.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[April 1998 through June 1998]

Trans. No.		Manual/subject/publication No.
		Physical Therapy, Occupational Therapy, and Speech-Language Pathology Assistants and Aides, and Respiratory Therapy Aides and Trainees.
		Exception Because of Binding Contract.
		Exception Because of Unique Circumstances or Special Labor Market Conditions.
		Provider Recordkeeping and Reporting Requirements.
404	•	Cost Not Related to Patient Care.
		Unallowable Costs Not Related to Patient Care.
		Provider Reimburse ment Manual—Part 2 **Provider Cost Reporting Forms and Instructions** **Chapter 37** **(HCFA Pub. 15–2–AK)** **(Superintendent of Documents No. HE 22.8/4)**
1	•	This transmittal introduces Chapter 37, Skilled Nursing Facility Cost Report Form.
		State Medicaid Manual—Part 3 **Eligibility** **(HCFA Pub. 45–3)** **(Superintendent of Documents No. HE 22.8/10)**
70	•	Coverage of Qualifying Individuals for Medicare Part B Premiums.
71	•	Medicaid Eligibility for Disabled Children Who Lose SSI Payment.
72	•	Continuous Eligibility.
73	•	Buy-In to Medicaid for the Working Disabled.
		State Medicaid Manual—Part 4 **Services** **(HCFA Pub. 45–4)** **(Superintendent of Documents No. HE 22.8/10)**
71	•	Home and Community-Based Services—Basis, Scope, and Purpose.
		Definition of Services.
		Home and Community-Based Services—Model Waiver Request.
		Home and Community-Based Services—Amendments.
		Program Memorandum **Regional Office—General** **(HCFA Pub. 51)** **(Superintendent of Documents No. HE 22.28/5:90–1)**
98–3	•	Home Health Agency Surety Bond Requirements.
		Program Memorandum **Regional Offices—Standards and Certification** **(HCFA Pub. 54)** **(Superintendent of Documents No. HE 22.28/5:90–1)**
98–1	•	Civil Money Penalty Collection Procedures.
		Medicare/Medicaid **Sanction—Reinstatement Report** **(HCFA Pub. 69)**
98–4	•	Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated—March 1998.
97–5	•	Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated—April 1998.
97–6	•	Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated—May 1998.

ADDENDUM IV.—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER

Publication date	FR vol. 63 page	CFR part(s)	File code*	Regulation title	End of comment period	Effective date
04/09/98	17429–17431		HCFA–2246–N	Medicare, Medicaid, and CLIA Programs; Clinical Laboratory Improvement Amendments of 1998 Continuance of Approval as an Accrediting Organization: the Joint Commission on Accreditation of Healthcare Organizations, the American Association of Blood Banks, and the American Osteopathic Association.		06/30/99 07/20/01
04/14/98	18124–18135	422	HCFA–1027–IFC	Medicare Program; Definition of Provider-Sponsored Organization and Related Requirements.	06/15/98	05/14/98
04/22/98	19926		HCFA–1040–N	Medicare Program; May 7, 1998, Meeting of the Competitive Pricing Advisory Committee.		04/22/98
04/23/98	20110–20131	410, 417, 424, 482	HCFA–3706–F	Medicare Program; Scope of Medicare Benefits and Application of the Outpatient Mental Health Treatment Limitation to Clinical Psychologist and Clinical Social Worker Services.		06/22/98
04/30/98	23790–23791		HCFA–2008–PN	Medicare and Medicaid Programs; Recognition of the American Association for Accreditation of Ambulatory Surgery Facilities, Inc. for Ambulatory Surgical Centers Program.	06/01/98	04/30/98
05/07/98	25320–25357	142	HCFA–0045–P	National Standard Health Care Provider Identifier.	07/06/98	05/07/98
05/07/98	25272–25320	142	HCFA–0149–P	Health Insurance Reform: Standards for Electronic Transactions.	07/06/98	05/07/98
05/07/98	25360–25379	422	HCFA–1011–IFC	Medicare Program; Waiver Requirements and Solvency Standards for Provider-Sponsored Organizations.	07/06/98	06/08/98
05/08/98	25576–25715	405, 412, 413	HCFA–1003–P	Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1999 Rates.	07/07/98	05/08/98
05/12/98	26318–26360	410, 412, 413, 415, 485.	HCFA–1878–F	Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1998 Rates.		06/11/98
05/12/98	26252–26316	409, 410, 411, 413, 424, 483, 489.	HCFA–1913–IFC	Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities.	07/13/98	07/01/98
05/13/98	26565–26566	405, 412, 413	HCFA–1003–CN	Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1999 Rates; Corrections.		05/13/98
05/14/98	26722–26738	493	HCFA–2239–F	CLIA Program; Simplifying CLIA Regulations Relating to Accreditation, Exemption of Laboratories Under a State Licensure Program, Proficiency Testing, and Inspection.		06/15/98
05/14/98	26811–26812		HCFA–3888–NC	Medicare and Medicaid Programs; Request for Public Comments on the Quality Improvement System for Managed Care.	05/26/98	05/14/98
05/18/98	27251–27253	413	HCFA–1876–P	Medicare Program; Revision to Accrual Basis of Accounting Policy.	07/17/98	05/18/98
06/01/98	29648–2966	441, 489	HCFA–1152–1–F	Medicare and Medicaid Programs; Surety Bond Requirements for Home Health Agencies.		07/01/98

ADDENDUM IV.—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER—Continued

Publication date	FR vol. 63 page	CFR part(s)	File code*	Regulation title	End of comment period	Effective date
06/01/98	29743		HCFA–3782–NC	Medicare Program; Withdrawal of Proposed Notice and Request for Assessment on the Salitron System for the Treatment of Xerostomia (Dry Mouth) Secondary to Sjorgren's Syndrome.	07/31/98	06/01/98
06/03/98	30166–30173		HCFA–3250–NOI	Medicare Program; Coverage and Administrative Policies for Clinical Diagnostic Laboratory Tests; Intent to Form Negotiated Rulemaking Committee.	07/06/98	06/03/98
06/04/98	30499–30506		HCFA–9152–N	Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—Third Quarter 1997.		06/04/98
06/08/98	31123–31129	420	HCFA–6144–FC	Medicare Program; Incentive Programs—Fraud and Abuse.	08/07/98	07/08/98
06/09/98	31513–31514		HCFA–1044–N	Medicare Program; June 22, 1998, Meeting of the Practicing Physicians Advisory Council.		06/09/98
06/11/98	32015–32018		HCFA–1104–N	Medicare Program; Notice for the Solicitation for Proposals for a Case Management Demonstration Project Focused on Congestive Heart Failure or Diabetes Mellitus.	07/13/98	06/11/98
06/11/98	32019		HCFA–1043–N	Medicare Program; June 24 and 25, 1998, Meeting of the Competitive Pricing Advisory Committee.		06/11/98
06/12/98	32290–32521	416, 488	HCFA–1885–P	Medicare Program; Update of Ratesetting Methodology, Payment Rates, Payment Policies, and the List of Covered Surgical Procedures for Ambulatory Surgical Centers Effective October 1, 1998.	08/11/98	06/12/98
06/15/98	32669	493	HCFA–2239–F	CLIA Program; Simplifying CLIA Regulations Relating to Accreditation, Exemption of Laboratories Under a State Licensure Program, Proficiency Testing, and Inspection; Correction.		06/15/98
06/16/98	32784–32798	142	HCFA–0047–P	Health Insurance Reform; National Standard Employer Identifier.	08/17/98	06/16/98
06/16/98	32889–32890		HCFA–2028–N	New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: February 1998 and March 1998.		06/16/98
06/22/98	33856–33875	482	HCFA–3005–F	Medicare and Medicaid Programs; Hospital Conditions of Participation; Identification of Potential Organ, Tissue, and Eye Donors and Transplant Hospitals' Provision of Transplant-Related Data.		08/21/98
06/22/98	33882–33890	410, 414	HCFA–1906–P	Medicare Program; Payment for Teleconsultations in Rural Health Professional Shortage Areas.	08/21/98	06/22/98
06/24/98	34320–34328	410	HCFA–3004–IFC	Medicare Program; Medicare Coverage of and Payment for Bone Mass Measurements.	08/24/98	07/01/98
06/26/98	34968–35116	400, 403, 410, 411, 417, 422.	HCFA–1030–IFC	Medicare Program; Establishment of the Medicare+Choice Program.	09/24/98	07/27/98

Addendum V—Categorization of Food and Drug Administration-Allowed Investigational Device Exemptions

Under the Food, Drug, and Cosmetic Act (21 U.S.C. 360c), devices fall into one of three classes. Also, under the new categorization process to assist HCFA, the Food and Drug Administration assigns each device with a Food and Drug Administration-approved investigational device exemption to one of two categories. To obtain more information about the classes or categories, please refer to the **Federal Register** notice published on April 21, 1997 (62 FR 19328).

The following information presents the device number, category (in this case, A), and criterion code.

G970312	A1
G980008	A2
G980046	A2
G980059	A2
G980077	A1
G980093	A1
G980094	A1
G980117	A2

The following information presents the device number, category (in this case, B), and criterion code.

G970168	B1
G970215	B3
G970249	B2
G970275	B2
G970287	B1
G970303	B4
G980013	B3
G980044	B4
G980048	B4
G980049	B4
G980050	B4
G980052	B4
G980053	B4
G980054	B2
G980055	B3
G980057	B2
G980058	B2
G980061	B2
G980062	B3
G980065	B4
G980066	B4
G980067	B2
G980068	B2
G980069	B4
G980070	B4
G980071	B3
G989072	B1
G980073	B1
G980075	B3
G980076	B1
G980079	B4
G980082	B4
G980086	B1
G980087	B4
G980089	B2
G980090	B4
G980092	B2
G980096	B4
G980097	B1
G980098	B3
G980099	B4
G980100	B4
G980101	B2
G980102	B2
G980103	B4
G980106	B5
G980114	B4
G980116	B3
G980120	B4
G980121	B2
G980122	B1
G980127	B1
G980137	B3

[FR Doc. 98–32590 Filed 12–8–98; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Announcement of Office of Management and Budget (OMB) Control Numbers for Agency Information Collections Approved Under the Paperwork Reduction Act of 1995

AGENCY: Health Care Financing Administration.

This notice announces and displays OMB control numbers for Health Care Financing Administration (HCFA) information collections that have been approved by OMB.

Under OMB's regulations implementing the Paperwork Reduction Act (PRA), 44 U.S.C. § 3501, each agency that proposes to collect information must submit its proposal for OMB review and approval in accordance with 5 CFR part 1320. Once OMB has approved an agency's proposed collection of information and issues a control number, the agency must display the control number.

OMB regulations provide for alternative methods of displaying OMB control numbers. In the case of collections of information published in regulations, display is to be ''provided in a manner that is reasonably calculated to inform the public.'' To meet this requirement an agency may display such information in the **Federal Register** by publishing such information in the preamble or the regulatory text, or in a technical amendment to the regulation, or in a separate notice announcing OMB approval of the collection of information.

To comply with this requirement HCFA has chosen to publish this notice announcing OMB approval of the collections of information published in regulations. As stated above, this notice announces and displays the assigned OMB control numbers for HCFA's information collections that have been approved by OMB.

	OMB control Nos.
42 CFR	
403.210	0938–0640.
405.262	0938–0267.
405.376	0938–0270.
405.427	0938–0155.
405.465, 405.481	0938–0301.
405.711	0938–0045.
405.807	0938–0033.
405.821	0938–0034.
405.2100–.2171	0938–0386.
405.2110, 405.2112	0938–0657, & 0658.
405.2133	0938–0046, 0447, & 0448.
405.2135–.2171	0938–0360.
406.7	0938–0251.
406.13	0938–0080.
406.15	0938–0501.
406.28	0938–0025.
407.10, 407.11	0938–0245.
407.18	0938–0679.
407.27	0938–0025.

	OMB control Nos.
407.40	0938–0035.
408.6	0938–0041.
409.40–.50	0938–0357.
410.1	0938–0679.
410.32	0938–0685.
410.33	0938–0721.
410.36	0938–0357.
410.38	0938–0534.
410.40	0938–0042.
410.71	0938–0685.
410.170	0938–0357.
411.4–.15	0938–0357.
411.15	0938–0224.
411.20–411.206	0938–0565.
411.370–411.389	0938–0714.
411.404, 411.406	0938–0465.
411.408	0938–0566.
412.20–.32	0938–0358.
412.40–.62	0938–0359.
412.44, 412.46	0938–0445.
412.92	0938–0477.
412.105	0938–0456.
412.106	0938–0691.
412.116	0938–0269.
412.256	0938–0573.
413.13	0938–0463.
413.16	0938–0583.
413.17	0938–0202, & 0685.
413.20	0938–0202 & 0236.
413.20, 413.24	0938–0022, 0037, 0050, 0102, 0107, 0301, 0463, & 0511.
413.56	0938–0463.
413.64	0938–0269.
413.157	0938–0463.
413.170	0938–0296.
413.198	0938–0236.
413.343	0938–0739.
414.40	0938–0008.
414.330	0938–0372.
416.43	0938–0506.
416.47	0938–0266, & 0506.
417.124	0938–0472.
417.126	0938–0469, 0701, & 0732.
417.143	0938–0470.
417.162	0938–0469.
417.408	0938–0470.
417.436	0938–0610.
417.470	0938–0701, & 0732.
417.478	0938–0469.
417.479, 417.500	0938–0700.
417.801	0938–0610.
418.1–418.405	0938–0313.
418.22, 418.24, 418.28, 418.30, 418.56, 418.58, 418.70, 418.83, 418.96, 418.100	0938–0302.
420.200–.206	0938–0086.
421.100	0938–0357.
421.310, 421.312	0938–0723.
422.350–422.390	0938–0733.
422.370–422.378	0938–0722.
422.430	0938–0390.
424.5	0938–0534.
424.20	0938–0454.
424.22	0938–0357, & 0489.
424.32	0938–0008 & 0739.
424.57	0938–0685, & 0717.
424.73, 424.80	0938–0685.
424.123	0938–0484.
424.124	0938–0042.
426.102–426.104	0938–0526.
430.10	0938–0673.
430.10–.20	0938–0193.
430.12	0938–0610.
430.20	0938–0610.
430.30	0938–0101.
431.1–431.865	0938–0062.
431.17	0938–0467.

	OMB control Nos.
431.110	0938–0390.
431.107	0938–0610.
431.306	0938–0502.
431.630	0938–0445.
431.800	0938–0094, & 0300.
431.800–.820	0938–0144.
431.802–.822	0938–0246.
431.814	0938–0146, & 0147.
431.865	0938–0094, & 0246.
433.68, 433.74	0938–0618.
433.110–.131	0938–0487.
433.110, 433.112–433.114, 433.116, 433.117, 433.119, 433.121, 433.122, 433.127, 433.130, 433.131.	0938–0247.
433.138	0938–0502.
433.139	0938–0502.
434.28	0938–0610.
434.44, 434.67, 434.70	0938–0700.
435.1–435.1011	0938–0062.
435.217, 435.726, 435.735	0938–0449.
435.940–.965	0938–0467.
440.1–.270	0938–0062.
440.10	0938–0449.
440.30	0938–0685.
440.167	0938–0193.
440.180	0938–0272.
441.60	0938–0354.
441.250–.300	0938–0481.
441.300–.305	0938–0272.
441.302	0938–0449.
442.1–.119	0938–0062, & 0379.
447.31	0938–0287.
447.53	0938–0429.
447.253	0938–0523.
447.272	0938–0618.
447.280	0938–0624.
447.500–.542	0938–0676.
447.550	0938–0676.
455.100–.106	0938–0086.
456.650–.657	0938–0061, & 0282.
456.654	0938–0445.
456.700, 456.705, 456.709, 456.711, 456.712	0938–0659.
466.71, 466.73, 466.74, 466.78	0938–0445.
466.78	0938–0692.
473.18, 473.34, 473.36, 473.42	0938–0443.
476.104, 476.105, 476.116, 476.134	0938–0426.
482.1–.66	0938–0380.
482.2–.57	0938–0382.
482.12, 482.22	0938–0328.
482.27	0938–0328, & 0698.
482.41	0938–0242.
482.30, 482.41, 482.43, 482.53, 482.56, 482.57, 482.60–.62	0938–0328, & 0378.
482.66.	0938–0328, & 0624.
483.10.	0938–0610.
483.70.	0938–0242.
483.400–.480	0938–0062.
483.470	0938–0242.
484.1–.52	0938–0365.
484.10	0938–0610.
484.10–.52	0938–0355.
484.12	0938–0685.
484.18	0938–0357.
484.48	0938–0519.
484.52	0938–0687.
485.56, 485.58, 485.60, 485.64, 485.66	0938–0267.
485.701–.729	0938–0065, & 0273.
485.709, 485.711, 485.717, 485.719, 485.721, 487.723, 485.725, 485.727, 485.729.	0938–0336.
486.100–.110	0938–0338.
486.150–.163	0938–0071, & 0258.
486.155, 486.161, 486.163	0938–0336.
486.301–.325	0938–0512, & 0688.
488.4	0938–0690.
488.18	0938–0391, & 0667.
488.26	0938–0379, & 0391.

	OMB control Nos.
488.28	0938–0391.
488.60	0938–0360.
489.20	0938–0214, 0667, & 0692.
489.21	0938–0357.
489.24	0938–0667.
489.27	0938–0692.
489.40–.41	0938–0383.
489.102	0938–0610.
491.1–.11	0938–0074.
491.9	0938–0334.
493.1–.2001	0938–0151, 0170, 0544, 0581, 0599, 0612, 0650, & 0653.
493.551–.557	0938–0686.
493.1840	0938–0655.
498.40–.95	0938–0486, & 0567.
1003.100, 1003.101, 1003.103	0938–0700.
1004.40, 1004.50, 1004.60, 1004.70	0938–0444.
45 CFR	
5b.1–.13	0938–0734.
96.70–.74	0938–0481.
146.111, .115, .117	0938–0703.
146.136	0938–0719.
146.150, .152, .160, .180	0938–0703.
148.120, .122, .124, .128	0938–0702.

Dated: December 2, 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. 98–32673 Filed 12–8–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: December 17, 1998.

Time: 2:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building—Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, (Telephone Conference Call).

Contact Person: Lawrence E. Chaitkin, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–26, Rockville, MD 20857, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS.)

Dated: December 2, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–32686 Filed 12–8–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel MBRS Special Emphasis Panel.

Date: December 4, 1998.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIGMS, Office of Scientific Review, Natcher Building, Room 1AS–13, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Helen R. Sunshine, PHD, Chief, Office of Scientific Review, NIGMS, Natcher Building, Room 1AS–13, Bethesda, MD 20892, (301) 594–2881.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: December 2, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–32687 Filed 12–8–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–C J2(P).

Date: January 24–26, 1999.

Time: January 24, 1999, 8:00 PM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5 Blossom Street, Boston, MA 02114.

Contact Person: Dan E. Matsumoto, PHD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37B, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 2, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–32668 Filed 12–8–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personnel information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: February 12, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Ave, N.W., Washington, DC 2007.

Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–9787.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group, Clinical and Treatment Subcommittee.

Date: February 25–26, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, Versailles Ill, 8102 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Elsie Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787, etaylor@niaaa.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273. Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: December 2, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–32689 Filed 12–8–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–04, R01 Review.

Date: December 10, 1998.

Time: 10:00 AM to 11:45 AM.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, PHD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–20, R01 Review.

Date: December 10, 1998.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, PHD, DMD, Scientific Review Administrator,

4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–14, K08, K23, R03 Review.

Date: December 14, 1998.

Time: 2:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William J. Gartland, PHD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–22, Review R03s & K23.

Date: December 15, 1998.

Time: 3:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William J. Gartland, PHD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–05, R01 Review.

Date: December 16, 1998.

Time: 3:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, PHD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 98–21, Review of F32, K23, R03s.

Date: December 18, 1998.

Time: 2:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William J. Gartland, PHD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: December 3, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–32690 Filed 12–8–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 4355–N–06]

Notice of Proposed Information Collection: Comment Request

AGENCY: Office of the Secretary—Office of Lead Hazard Control, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement concerning the Notice of Funding Availability for the Lead Hazard and other household hazards grants programs will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: February 8, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW, Room P3206, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Dana Bres, Technical Assistance Specialist, Department of Housing and Urban Development, 451 7th Street, SW, Room P3206, Washington, DC 20410, telephone number (202) 755–1785 extension 117 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title of Proposal: Notice of Funding Availability (NOFA) for the Lead-Based Paint Hazard Control in Privately-Owned Housing Grant Program and Interventions to Control Moisture and Mold Problems in Inner City Housing.

OMB Control Number, if applicable:

Description of the need for the information and proposed use: This information collection is required in conjunction with the issuance of NOFAs announcing the availability of approximately $50,000,000 for grants for Lead-Based Paint Hazard Control activities in privately-owned housing and grants for Interventions to Control Moisture and Mold Problems in Inner City Housing. Grants are authorized under Title X of the Housing and Community Development Act of 1992, Pub. L. 102–550, Section 1011(g) and other legislation.

Agency form numbers, if applicable: None.

Members of affected public: Potential applicants include states and local governments.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Task	Number of respondents	Frequency of responses	Hours per response	Burden hours
Application Development	80	1	100	8,000
Award of Grant	23	1	24	552
Total Estimated Burden Hours: 8,552.				

Number of copies to be submitted to the Office of Lead Hazard Control for evaluation: Original and four (4) copies

Status of the proposed information collection: This is a new collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 2, 1998.

David. E. Jacobs,

Director, Office of Lead Hazard Control.

[FR Doc. 98–32562 Filed 12–8–98; 8:45 am]

BILLING CODE 4210–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare a Supplement to a Final Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a supplement to a final environmental impact statement.

SUMMARY: This notice advises the public that the Fish and Wildlife Service and National Marine Fisheries Service (Services) intend to prepare draft and final Supplemental Environmental Impact Statements (Supplement) pertaining to the Plum Creek Timber Company, Cascade Timberlands Habitat Conservation Plan (Plan). The Plan was accepted by the Services and an Incidental Take Permit (Permit) was originally issued in June 1996 for Plum Creek lands located in King and Kittitas Counties, Washington. The Supplement will address Plum Creek's request for HCP modification associated with a potential land exchange with the U.S. Forest Service (Forest Service). The Final Environmental Impact Statement (Statement) associated with the original Plan is not being re-opened or re-analyzed, and the decisions based on the original Statement are not being reconsidered.

The Services are furnishing this notice in order to advise other agencies and the public of our intentions. Formal public scoping will not be conducted, consistent with 40 CFR 1502.9(c)(4). However, public review and comment periods will be provided for the draft and final Supplement and their availability will be announced in the **Federal Register**.

ADDRESSES: Requests for information should be sent to William Vogel, Wildlife Biologist, Fish and Wildlife Service, 510 Desmond Drive, S.E., Suite 102, Lacey, Washington, 98503–1273, (telephone: 360/753–9440; facsimile: 360/534–9331); or Bob Turner, Habitat Conservation Plan Program Manager, National Marine Fisheries Service, 510 Desmond Drive, S.E., Suite 103, Lacey, Washington, 98503–1273 (telephone: 360/753–6054; facsimile: 360/753–9517).

SUPPLEMENTARY INFORMATION: The June 1996 Plum Creek Plan applied to a 169,177-acre Project Area located within a 418,690-acre Planning Area. The Planning Area is located within east King County and west Kittitas County, Washington, and is bisected by U.S. Interstate 90.

The potential land exchange would result in a transfer to the Forest Service of up to 54,000 acres of the 169,177-acre Project Area previously covered by Plum Creek's Permit and Plan, and the transfer of up to 12,000 acres of Forest Service lands within the 418,690-acre Planning Area to Plum Creek. If modified, the Plum Creek permit area would consist of approximately 127,000 acres.

The Permit allows Plum Creek to incidentally take threatened and endangered fish and wildlife and requires Plum Creek to implement a habitat-based, prescriptive management plan designed to minimize and mitigate such take. The 1996 Plan considered that Plum Creek lands managed under the Plan and Permit would likely change as a result of future land exchanges with the Forest Service. Consequently, the Plan and associated Implementation Agreement provide procedures and criteria to modify the Plan to accommodate the exchange of lands. The Plan describes two scenarios for land exchanges with the Forest Service whereby ''the biological integrity of the Plan would be either maintained or improved.''

The Supplemental Environmental Impact Statement will analyze Plum Creek's proposal in order to determine the environmental impact (beneficial or adverse) which would result from implementation of the Plan modification, as compared to the original federal action (approval and implementation of the original Plan and issuance of an Incidental Take Permit).

Questions concerning this proposed action and the environmental review should be directed to the Fish and Wildlife Service or National Marine Fisheries Service at the address or telephone number provided above.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 USC 4321 *et seq.*), National Environmental Policy Act Regulations (40 CFR 1500–1508), other appropriate Federal laws and regulations, and policies and procedures of the Services for compliance with those regulations.

Dated: November 25, 1998.

Thomas J. Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 98–32054 Filed 12–8–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–340–1150–00]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Northwest California Resource Advisory Council, Kelseyville, California.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Public Law 92–463) and the Federal Land Policy and Management Act (Public Law 94–579), the U. S. Bureau of Land Management's Northwest California Resource Advisory Council will meet Thursday and Friday, Jan. 21, and 22, 1999, at the Konocti Harbor Resort, Kelseyville, California.

SUPPLEMENTARY INFORMATION: The meeting begins at 10 a.m. Thursday, Jan. 21, in the Conference Room of the Konocti Harbor Resort. Agenda items include orientation matters, an update on BLM-California's Standards for Healthy Rangelands and Guidelines for Livestock Grazing, an update on

development of the BLM-California Strategic Plan, a status report on Headwaters, and a report on implementation of the Knoxville Management Plan. Managers of the BLM Arcata, Redding and Ukiah field offices will also present reports. Time will be reserved at 4 p.m. for public comments. Depending on the number of persons wishing to speak, a time limit may be established.

On Friday, Jan. 22, members will convene at 8 a.m. at the Konocti Harbor Resort lobby, and depart immediately for a tour of the Payne Ranch property which will be acquired for public use.

Members of the public are welcome on the tour, but they must provide their own transportation. The tour and meeting will conclude by noon.

FOR ADDITIONAL INFORMATION: Contact Joseph J. Fontana, public affairs officer, at (530) 257–5381.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 98–32675 Filed 12–8–98; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget Review; Comment Reguest

TITLE: Solicitation for Comments: Royalty-in-Kind (RIK) Determination of Need.

SUMMARY: The Minerals Management Service (MMS), an agency of the U.S. Department of the Interior, is requesting written comments from interested parties—particularly from small and/or independent petroleum refiners—regarding their experiences in the crude oil marketplace. Specifically, we are interested in small and/or independent refiners' experiences in gaining access to adequate supplies of crude oil at equitable prices. This Determination of Need process will assist the Secretary of the Interior in deciding whether or not to conduct a sale(s) of Federal Government royalty oil under the Royalty-In-Kind (RIK) program.

DATES: Responses must be submitted on or before January 25, 1999.

ADDRESSES: Responses sent via the U.S. Postal Service should be sent to Tom Brozovich, Accounting and Reports Division, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3131, Denver, Colorado 80225–0165; courier address is Building 85, Room B513, Denver Federal Center, Denver, Colorado 80225; e-mail address is thomas.brozovich@mms.gov.

FOR FURTHER INFORMATION CONTACT: Tom Brozovich, Accounting and Reports Division, phone 303–231–3351, FAX 303–231–3711, e-mail thomas.brozovich@mms.gov.

Background Information

Under the provisions of the Mineral Leasing Act of 1920 (MLA), as amended (30 U.S.C. § 192), and the Outer Continental Shelf Lands Act (OCSLA) of August 7, 1953, as amended (43 U.S.C. § 1334, 1353), the Secretary of the Interior can take Federal royalty oil in kind, in lieu of royalty payment, and sell it to ''eligible refiners'' for use in their refineries. The oil RIK program is governed by the regulations at 30 CFR 208, effective December 1, 1987, (52 FR 41908, 10/30/1987).

An ''eligible refiner,'' as defined at 30 CFR § 208.2, means a refiner of crude oil meeting the following criteria to purchase royalty oil:

(1) For the purchase of royalty oil from *onshore leases,* it means a refiner that has an operating refinery and qualifies as a small and independent refiner as those terms are defined in Sections 3(3) and 3(4) of the Emergency Petroleum Allocation Act, 15 U.S.C. 751 *et seq.* A refiner that, together with all persons controlled by, in control of, under common control with, or otherwise affiliated with the refiner, inputs domestic crude oil from its own production exceeding 30 percent of total refinery input is ineligible to participate in royalty sales under this part. (In other words, to be eligible under this part, the refiner must receive at least 70 percent of his feeder stock from unaffiliated sources.) Crude oil received in exchange for the refiner's own production is considered to be part of that refiner's own production for purposes of this section.

(2) For the purchase of royalty oil from *offshore leases,* it means a refiner that has an operating refinery and qualifies as a small business enterprise under the rules of the Small Business Administration (SBA) (13 CFR Part 121). The SBA standard for a small business within the Petroleum Refining Industry is less than or equal to 75,000 bbl per day, and less than or equal to 1,500 employees.

The regulation at 30 CFR § 208.4(a) governs the Determination of Need process and states that:

> The Secretary may evaluate crude oil market conditions from time to time. The evaluation will include, among other things, the availability of crude oil and the crude oil requirements of the Federal Government, primarily those requirements concerning matters of national interest and defense. The Secretary will review these items and will determine whether eligible refiners have access to adequate supplies of crude oil and whether such oil is available to eligible refiners at equitable prices. Such determinations may be made on a regional basis * * *.

Given that existing RIK contracts (involving Gulf of Mexico and Pacific Region offshore leases) expire May 1, 1999, MMS has concluded that a Determination of Need would be most beneficial in any decision to hold future royalty oil sales.

SUPPLEMENTARY INFORMATION: While the RIK program has been an important source of crude oil for many refiners over the years, it has not been without its problems. From its heyday in the late 1970's and early to mid 1980's, the program has declined from over 60 active contracts (both onshore and offshore) to the current total of only six offshore contracts. Many factors have contributed to the diminished participation, including the following:

- The surplus of crude oil supplies on both the international and domestic markets, which has made it easier for small refiners to purchase the oil they need to run their refineries without having to rely on Federal royalty oil; and
- Complexities of the current program, which has been characterized as having burdensome reporting and administrative requirements and valuation uncertainty.

MMS has completed a study of the oil RIK program and is conducting a pilot (Eligible Refiner Oil RIK Pilot, OMB Control Number 1010–0109) to check the results of that study. The pilot is reviewing reporting and delivery issues symptomatic of the current program. This effort should be completed by the end of calendar year 1998, with formal recommendations for streamlining the program to be submitted to the Director, MMS, in early 1999. While it's premature to predict the exact nature or scope of forthcoming program changes, it's not unreasonable to expect:

- Changes to current regulations affording greater clarity and logical business practice in the areas of administrative fees, transportation allowances, operator delivery requirements, resolution of delivery imbalances and gravity bank adjustments, etc.; and
- Greater specificity and certainty with regard to RIK contract language, especially with regard to provisions addressing the valuation of RIK oil for billing purposes.

Consequently, the current program could undergo dramatic changes in the

near future as various pilot efforts reach maturity and resulting recommendations are implemented.

Potential respondents should also note that the mere conduct of a Determination of Need in no way presupposes that there will or will not be a subsequent RIK sale(s). A Determination of Need is a logical first step in identifying general marketplace conditions. However, any decision to conduct an RIK sale(s) will necessarily be predicated on the regulatory criteria of ''access'' and ''equity''—i.e., whether a significant number of refiners have limited or no access to the marketplace and/or have experienced difficulty in negotiating a fair price for feeder stocks.

Information Requested

To assist MMS in completing a Determination of Need, please respond in writing or electronically to the following questions:

(1) How would you describe your business activity—small/independent refiner, other refiner, producer, transporter, etc.?

(2) For your immediate region or geographic area of operation, how would you characterize the general availability of crude oil?

(3) Do you currently own or lease an operating refinery? If so, where is it located?

(4) Is your refinery operating at full or near-full capacity? If not, why not?

(5) Do you meet the RIK program eligibility criteria previously noted for onshore or offshore leases, or both?

(6) What percentage of onshore versus offshore crude oil volumes are currently being run through your refinery?

(7) What type of crude is desired to sustain your mix of refined products—Wyoming Sweet, Wyoming Sour, Light Louisiana Sweet, etc.?

(8) Have you been denied access to crude oil supplies in the past 12 to 18 months? What was the basis for the denial? For example, was the denial attributable to unavailability of desired crude, a lack of access to the transportation pipeline, or other reasons? Please provide documentation supporting any claim of denial.

(9) Do you use exchange agreements? Why?

(10) Are the feeder stocks you purchase priced above market values for your geographic area? In other words, do you pay a bonus or premium because of your status as a small and/or independent refiner? Please identify, by crude oil type, what you pay on the average per barrel of oil.

(11) Have you previously participated in the Federal royalty oil program? If a prior program participant, why did you leave the program? How would you now benefit from receiving Federal royalty oil?

(12) Do you currently provide refined products (heating oil, jet fuel, etc.) to a U.S. military base or Federal installation? If so, identify the recipient facility and how long you have been supplying refined products.

(13) Do you anticipate any near term developments that would change your access to necessary supplies of crude oil at equitable prices?

All correspondence, records, or information received in response to this Notice, and specifically in response to the questions listed above, are subject to disclosure under the Freedom of Information Act. All information provided will be made public unless the respondent identifies which portions are proprietary. Please highlight the proprietary portions, including any supporting documentation, or mark the page(s) that contain proprietary data.

The Paperwork Reduction Act of 1995 requires us to inform you that this information is being collected by MMS under an approved information collection titled Royalty-in-Kind (RIK) Determination of Need, OMB Control Number 1010–0119. We estimate the burden for responding to this information collection 4 hours. Comments on the accuracy of this burden estimate or suggestions on reducing this burden should be directed to the Information Collection Clearance Officer, MS–4230, MMS, 1849 C Street, N.W., Washington, DC 20240 and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the U.S. Department of the Interior (OMB Control Number 1010–0119), Washington, DC 20503. Proprietary information is protected by the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1733), the Freedom of Information Act (5 U.S.C. 552 (b)(4), the Indian Minerals Development Act of 1982 (25 U.S.C. 2103) and Department regulations (43 CFR 2). 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.

Dated: December 2, 1998.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 98–32580 Filed 12–8–98; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Proposed Land Exchange City of Alexandria and Arlington County, Virginia and Notice of Scheduled Environmental Review Process Workshop

AGENCY: Notice is hereby given that the National Park Service (NPS) is proposing to conduct an exchange of land interests with Commonwealth Atlantic Properties Inc., Commonwealth Atlantic Land Company, and Commonwealth Atlantic Land V Inc., hereinafter referred to collectively as Commonwealth. The proposed exchange of land interests concerns two distinct properties located in Alexandria, Virginia, and Arlington County, Virginia, respectively. The National Park Service has scheduled a public workshop as part of its environmental review process to identify and analyze the potential environmental impacts of the proposed exchange.

FOR FURTHER INFORMATION CONTACT: Associate Superintendent, Stewardship and Partnerships, National Capital Region, National Park Service, 1100 Ohio Drive, SW., Washington, DC 20242.

SUPPLEMENTARY INFORMATION: By virtue of an Indenture land agreement dated February 12, 1938, the Richmond, Fredericksburg and Potomac Railroad Company (RF&P), predecessor in title to Commonwealth, conveyed to the United States certain land use restrictions over 29.1 acres of land in Arlington County, Virginia, currently owned by Commonwealth and hereinafter referenced as the ''Indenture Land.''

Commonwealth also owns 38.55 acres of land in Alexandria, Virginia, hereinafter referenced as ''Potomac Greens.'' By virtue of a Deed of Easement dated August 13, 1984, and in accordance with the terms of a previous Exchange Agreement between the United States and RF&P, the United States conveyed to RF&P a perpetual easement on and across a portion of lands of the George Washington Memorial Parkway (Parkway) for access, including ingress and egress from the northbound and southbound lanes of the Parkway to and from Potomac Greens in return for RF&P's obligation to construct at no cost to the United States a center-piered bridge and all associated ramps and connections necessary for ingress and egress to and from Potomac Greens to the Parkway and other valuable consideration.

Commonwealth is desirous of the United States relinquishing its restrictions on the Indenture Land in order to allow Commonwealth to implement a proposed plan for the mixed use development of the property in exchange for certain restrictions to be conveyed by Commonwealth to the United States relative to building heights and setbacks. Commonwealth has also proposed implementing a plan for the residential development of Potomac Greens, including minimal support retail.

The National Park Service is desirous of acquiring Commonwealth's access rights to the Parkway and in return is willing to partially relinquish the United States' interests in restricting the use of the Indenture Land. In accordance with National Park Service land exchange authority, the National Park Service will conduct an independent appraisal to determine if the interests in land to be exchanged are approximately equal in value.

Pursuant to Council on Environmental Quality regulations and National Park Service policy, the National Park Service announces the presentation of the proposed exchange of land interests associated with two distinct properties located in Alexandria and Arlington County, Virginia, respectively, for public review. Public comment on the proposed land exchange is requested to assist the National Park Service in identifying and analyzing potential environmental impacts.

A public open house to review and comment on the proposed land exchange will be held on December 10, 1998, in the cafeteria of the Cora Kelly Magnet School located at 3600 Commonwealth Avenue, Alexandria, Virginia 22313, between the hours of 7:00 p.m. and 9:30 p.m. Officials of the National Park Service and representatives of Commonwealth will be in attendance to describe the terms of the proposed exchange, answer questions and receive comments.

Detailed information concerning this proposed exchange is available from the Office of Stewardship and Partnerships, National Capital Region, National Park Service, 1100 Ohio Drive, SW., Washington, DC 20242.

For a period of 45 calendar days from the date of this notice, interested parties may submit comments to the above address. Adverse comments will be evaluated and this action may be modified or vacated accordingly. In the absence of any action to modify or vacate, this realty action will become the final determination of the National Park Service.

For further information please contact Mr. John Parsons, Associate Superintendent, Stewardship and Partnerships, National Capital Region at (202) 619–7025. Written comments may be addressed to Mr. Parsons at the above address.

Dated: November 30, 1998.

Terry R. Carlstrom,

Regional Director, National Capital Region.

[FR Doc. 98–32615 Filed 12–8–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Deleware and Lehigh Navigation Canal National Heritage Corridor Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware and Lehigh Navigation Canal National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

MEETING DATE AND TIME: Friday, December 11, 1998; 1:30–4:00 p.m.

ADDRESSES: Washington Crossing Visitors Center, 1112 River Road, Washington Crossing PA 18977.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh Canal National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

SUPPLEMENTARY INFORMATION: The Delaware and Lehigh Navigation Canal National Heritage Corridor Commisin was established by Pub. L. 100–692, November 18, 1998.

FOR FURTHER INFORMATION CONTACT: Gerald R. Bastoni, Executive Director, Delaware and Lehigh Navigation Canal, National Heritage Corridor Commission, 10 E. Church Street, Room A–208, Bethlehem, PA 18018, (610) 861–9345.

Dated: November 30, 1998.

Gerald R. Bastoni,

Executive Director, Delaware and Lehigh Navigation Canal NHC Commission.

[FR Doc. 98–32614 Filed 12–8–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Grand Canyon National Park, Coconino County, Arizona

AGENCY: National Park Service, Interior.

ACTION: Notice and Request For Comment.

SUMMARY: Notice is hereby given that a proposal for a cellular communication site at Grand Canyon National Park has been received. The project will be to construct and operate a telecommunications facility at Hopi Point on the South Rim of the park.

DATES: Written comments must be submitted on or before January 11, 1999.

ADDRESSES: Direct all written comments to Superintendent, Attn.: Barbara Nelson, Telecommunications Specialist, Grand Canyon National Park, P.O. Box 129, Grand Canyon, AZ 86023.

FOR FURTHER INFORMATION CONTACT: Paul Glazer, Chief, Branch Information/ Telecommunications Management at telephone number 520–638–7738.

Dated: December 3, 1998.

Steven D. Bone,

Acting Deputy Superintendent.

[FR Doc. 98–32757 Filed 12–8–98; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 751–TA–21–27]

Ferrosilicon From Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigations.

EFFECTIVE DATE: December 1, 1998.

FOR FURTHER INFORMATION CONTACT: Fred Fischer (202–205–3179), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On July 28, 1998, the Commission published notice (63 FR 40314) of its institution of investigations pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. § 1675(b)) (the Act) to review its determinations in countervailing duty investigation No. 303–TA–23 (Final) concerning ferrosilicon from Venezuela, and antidumping investigations Nos. 731–TA–566–570 and 731–TA–641 (Final) concerning ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela. In that notice, the Commission waived rule 207.45(c), delaying issuance of a schedule for the conduct of investigations Nos. 751–TA–21–27. On September 30, 1998, the Commission published notice (63 FR 52288) of a schedule in the subject investigations.

The Commission's new schedule for these investigations is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than February 22, 1999; the prehearing staff report will be placed in the nonpublic record on March 31, 1999; the prehearing conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on April 1, 1999; the deadline for filing prehearing briefs is April 7, 1999; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on April 13, 1999; the deadline for filing posthearing briefs is April 20, 1999; the Commission will make its final release of information on May 14, 1999; and final party comments are due on May 18, 1999.

For further information concerning these investigations see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: December 3, 1998.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–32677 Filed 12–8–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–406]

Certain Lens-fitted Film Packages; Notice of Commission Determination not to Review an Initial Determination Amending the Complaint and Notice of Investigation

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 the presiding administrative law judge's (ALJ's) initial determination (ID), which amends the complaint and notice of investigation in the above-captioned investigation to withdraw allegations of infringement of claim 16 of U.S. Letters Patent 5,063,400 from the scope of the investigation.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3104. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov). Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on March 25, 1998, based on a complaint by Fuji Photo Film Co., Ltd. (Fuji) of Tokyo, Japan. 63 FR 14474. On November 7, 1998, the sixth day of the evidentiary hearing, complainant Fuji orally moved to amend the complaint and notice of investigation to withdraw claim 16 of U.S. Letters Patent 5,0063,400 from the scope of the investigation. Respondents Achiever Industries Limited (Achiever) and P.S.I. Industries Inc. (P.S.I.) and the Commission investigative attorney supported Fuji's motion. No other respondent present at the hearing objected to Fuji's motion.

In view of the nature of the motion, the support of the IA, Achiever, and PSI, and the lack of objection by the other respondents present at the hearing, the presiding ALJ Luckern issued an ID (Order No. 47) on November 9, 1998, granting Fuji's oral motion.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission rule 210.42, 19 CFR 210.42.

Copies of the public version of the ALJ's ID, 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.

By order of the Commission.

Issued: September 4, 1998.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–32679 Filed 12–8–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–376–379 (Final) and 731–TA–788–793 (Final)]

Certain Stainless Steel Plate From Belgium, Canada, Italy, The Republic of Korea, South Africa, and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of countervailing duty investigations Nos. 701–TA–376, 377, and 379 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) and the final phase of antidumping investigations Nos. 731–TA–788–793 (Final) under section 735(b) of the Act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of subsidized imports from Belgium, Italy, and South Africa and by reason of less-than-fair-value imports from Belgium, Canada, Italy, the Republic of Korea (Korea), South Africa, and Taiwan of certain stainless steel plate in coils, provided for in subheadings 7219.11.00, 7219.12.00, 7219.31.00, 7219.90.00, 7220.11.00, 7220.20.10, 7220.20.60, and 7220.90.00 of the Harmonized Tariff Schedule of the United States.[1] Section 207.21(b) of

[1] For purposes of these investigations, Commerce has defined the subject merchandise as certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (e.g., cold-rolled, polished, etc.), provided that it maintains the specified dimensions of plate following such

the Commission's rules provides that, where the Department of Commerce has issued a negative preliminary determination, the Commission will not publish a notice of scheduling of the final phase of its investigation unless and until it receives an affirmative final determination from Commerce. Although the Department of Commerce has preliminarily determined that countervailable subsidies are not being provided to producers and exporters of certain stainless steel plate in coils from Korea, for purposes of efficiency the Commission hereby waives rule 207.21(b) and gives notice of the scheduling of the final phase of countervailing duty investigation No. 701–TA–378 (Final) under section 705(b) of the Act. The Commission is taking this action so that the final phases of the countervailing duty and antidumping investigations may proceed concurrently in the event that Commerce makes an affirmative final countervailing duty determination with respect to Korea. If Commerce makes a final negative countervailing duty determination with respect to Korea, the Commission will terminate its countervailing duty investigation under section 705(c)(2) of the Act (19 U.S.C. 1671d(c)(2)), and section 207.21(d) of the Commission's rules.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: November 4, 1998.

FOR FURTHER INFORMATION CONTACT: Woodley Timberlake (202–205–3188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in Belgium, Italy, and South Africa of certain stainless steel plate in coils, and that such imports from Belgium, Canada, Italy, Korea, South Africa, and Taiwan are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The final phase of the countervailing duty investigation with respect to Korea is being scheduled, under waiver of section 207.21(b), discussed above, for purposes of efficiency. The investigations were requested in petitions filed on March 31, 1998, by Armco, Inc., Pittsburgh, PA; J&L Specialty Steel, Inc., Pittsburgh, PA; Lukens, Inc., Coatesville, PA; North American Stainless, Ghent, KY; and the United Steelworkers of America, AFL–CIO/CLC.

Participation in the Investigations and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on March 9, 1999, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on March 23, 1999, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before March 16, 1999. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on March 18, 1999, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is March 16, 1999. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is March 29, 1999; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the

processing. Excluded from the scope of these investigations are the following: (1) plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars.

investigations on or before March 29, 1999. On April 16, 1999, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before April 20, 1999, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: December 1, 1998.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–32678 Filed 12–8–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. General Electric Company and InnoServ Technologies, Inc., Civil Action No. 98–1744 (RCL)(D.D.C.); Response to Public Comments

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), that Public Comments and the Response of the United States have been filed with the United States District Court for the District of Columbia in *United States* v. *General Electric Company and InnoServ Technologies, Inc.*, Civil Action No. 98–1744 (RCL)(D.D.C., filed July 14, 1998). On July 14, 1998, the United States filed a Complaint alleging that the proposed acquisition of InnoServ Technologies by General Electric would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The proposed Final Judgment, filed at the same time as the Complaint, permits General Electric to acquire InnoServ but requires that General Electric divest InnoServ's PREVU diagnostic software used in the maintenance and repair of diagnostic imaging machines (*e.g.*, CT Scanners, MRIs, x-ray machines).

Public comment was invited within the statutory 60-day comment period. Such Comments, and the Responses thereto, are hereby published in the Federal Register and have been filed with the Court. Copies of the Complaint, Stipulation, proposed Final Judgment, Competitive Impact Statement, Public Comments and the Response of the United States are available for inspection in Room 215 of the Antitrust Division, Department of Justice, 325 7th Street, N.W., Washington, D.C. 20530 (telephone: 202–514–2481) and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, N.W., Washington, D.C.

Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

director of Operations & Merger Enforcement, Antitrust Division.

Response To Public Comments

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h) (''APPA'' or ''Tunney Act''), the United states hereby responds to the public comments received regarding the proposed Final Judgment in this case.

I. Background

On July 14, 1998, the United States filed the Complaint in this matter, alleging that the acquisition by General Electric Company (''GE'') of InnoServ Technologies, Inc. (''InnoServ'') would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. Simultaneously with the filing of the Complaint, the United States filed a proposed Final Judgment and Stipulation signed by all the parties allowing for entry of the Final Judgment following compliance with the Tunney Act. A Competitive Impact Statement (''CIS'') was also filed with the Court and published in the **Federal Register**, along with the proposed Final Judgment, on July 24, 1998 (see 63 FR 39894).

As explained more fully in the Complaint and CIS, GE, through its wholly owned subsidiary, General Electric Medical Systems (''GEMS''), is the largest manufacturer of medical imaging equipment, such as CT scanners and magnetic resonance imagers (''MRIs''), and is the leading service provider of GE imaging equipment. InnoServ, despite struggling financially for the last two years, was one of the nation's largest independent service organizations (''ISOs'') and had significant expertise and competed with GE in servicing certain GE imaging equipment. GE and InnoServ also competed in numerous local markets for comprehensive multi-vendor and asset-management services (''multi-vendor service''). GE's acquisition of InnoServ was therefore likely to reduce competition substantially in two markets: (i) the market for servicing certain models of GE imaging equipment on a discrete, machine-by-machine basis; and (ii) the multi-vendor service market.

The proposed Final Judgment permits GE to acquire InnoServ, which it did on September 16, but requires GE to divest promptly InnoServ's proprietary diagnostic software (called ''PREVU''). Diagnostic software is used by service engineers to calibrate, maintain, and service imaging equipment more quickly. InnoServ is one of the very few companies other than GE that developed its own proprietary diagnostic software for GE imaging equipment, and the United States concluded that it was primarily PREVU that had made InnoServ a good competitor to GE.

The 60-day period for public comments expired on September 22, 1998. As of today, the United States has received comments from two persons—Independent Service Network International (''ISNI''), which filed Comments and Supplemental Comments, and Star Technologies.[1] The United States has carefully considered the views expressed in these comments, but nothing in these comments has altered the United States' conclusion that the proposed Final Judgment is in the public interest. Once these comments and this Response are published in the Federal Register, the United States will have fully complied with the Tunney Act and will then file a motion for entry of the proposed Final Judgment.

II. Response to Public Comments

A. Initial Comment of Independent Service Network International

ISNI, a trade association of 157 maintainers of high technology equipment, submitted two Comments. In its initial Comment, ISNI alleged that

[1] ISNI's initial Comments are attached as Appendix 1. The declaration of Claudia Betzner, ISNI's Executive Director, was submitted along with ISNI's initial Comments and is attached as Appendix 2. ISNI's Supplemental Comments are attached as Appendix 3. Star Technologies' Comment is attached as Appendix 4.

the CIS failed to comply with the APPA because it did not include certain information that ISNI believes necessary for it to evaluate whether entry of the proposed Final Judgment is in the public interest. Specifically, ISNI requests: (i) A technical and economic assessment of PREVU; (ii) a more detailed description of the relevant markets alleged in the Complaint and the effect of the proposed Final Judgment on those markets; (iii) information about other companies, if any, that expressed an interest in purchasing InnoServ; and (iv) information relating to the relationship between the settlement of this case and the simultaneous settlement of another Antitrust Division case against GE involving medical imaging equipment, *United States* v. *General Electric Co.,* No. CV–96–121–M–CCL (D. Mont., filed August 1, 1996) (the ''Montana case''). ISNI also challenges the United States' assertion that there were no documents considered determinative in formulating the proposed Final Judgment (Appendix 1, ISNI Comment at 16), and requests that the Court order the production of numerous types of documents that ISNI believes ''must exist'' (*id.* at 17–18). ISNI requests that the Court allow it to intervene and argues that a special master should be appointed (*id.* at 18–19). ''At the very least,'' ISNI asserts, the Court should hold a hearing in which ISNI may reply to this Response (*id.* at 19).

The United States responds to each of ISNI's specific requests in detail below. In order to put ISNI's Comments in context, however, we note initially that the essence of ISNI's concerns have nothing to do with either GE's acquisition of InnoServ or whether GE's divestiture of PREVU is in the public interest. Rather, ISNI's real aim is to convince this Court that GE has market power in various medical equipment and service markets, and that the United States should have challenged seven other transactions by GE in these markets dating back to 1994. (Appendix 1, ISNI Comment at 7–9). ISNI believes that the divestiture of PREVU will not resolve these competitive concerns, and therefore that GE should be compelled to license its own advanced diagnostic materials to ISNI's members and other service competitors (Appendix 1, ISNI Comment at 16).

Whether GE's prior transactions were anticompetitive, and whether it would be procompetitive to have GE license its own software, are not germane to an assessment of whether entry of the proposed Final Judgment serves the public interest. The proper focus of a Tunney Act proceeding is on the proposed final judgment, and the court should not look beyond the complaint in the case before it ''to evaluate claims that the government did not make and to inquire as to why they were not made.'' *United States* v. *Microsoft,* 56 F.3d 1448, 1459 (D.C. Cir. 1995). Nor does the APPA give a court authority to impose different terms on the parties.[2]

In this case, the United States concluded that the divestiture of PREVU would adequately remedy the antitrust violation alleged in the Complaint because it is PREVU, not GE's software, that would otherwise be eliminated from the market by this merger. While ISNI might believe that more competition would be created if GE had to license its software to INSI's members, the Tunney Act does not empower a court to reject a proposed final judgment based on beliefs that ''other remedies were preferable,'' Microsoft, 56 F.3d at 1460, or ''because a third party claims it could be better treated,'' *id.* at 1461 n.9.

In making its public interest determination, ''the court's function is not to determine whether the resulting array of rights and liabilities is one that will best serve society, but only to confirm that the resulting settlement is within the reaches of the public interest.'' *United States* v. *Western Elec. Co.,* 993 F.2d 1572, 1576 (D.C. Cir. 1992) (emphasis added, internal quotation and citation omitted). The settlement embodied in the proposed Final Judgment is well within the reaches of this public interest standard.

1. InnoServ's PREVU Software

ISNI's first request for additional information seeks a ''technical and economic evaluation'' of PREVU in order to demonstrate that its divestiture can establish a viable competitor in the relevant markets alleged in the Complaint. Specifically, ISNI argues that the United States must: (1) Provide a detailed description of PREVU; (ii) state whether anyone has licensed or purchased PREVU from InnoServ; (iii) state whether anyone has expressed an interest in licensing or purchasing PREVU from InnoServ; (iv) state whether PREVU helps InnoServ and potentially others to compete with GEMS and, is so, how; (v) compare the effectiveness of PREVU and the effectiveness of GEMS' advanced diagnostic software; and (vi) explain why it is not anticompetitive for GEMS to retain a non-exclusive license to use PREVU despite the fact that GE is not required to license its own advanced diagnostic software to competing service providers. (Appendix 1, ISNI Comment at 12).

ISNI apparently believes that it needs this information to determine whether any potential purchaser of the PREVU package could in fact compete effectively with GE, given that InnoServ itself was struggling financially. ISNI asks, ''how will the divestiture of PREVU create an effective competitor when it was not able to make InnoServ an effective competitor?'' (*id.* at 11). Yet this argument is relevant not to whether the proposed Final Judgment is in the public interest but rather to whether the United States should have filed suit to challenge this acquisition at all. If, as ISNI seems to fear, InnoServ was unable to compete effectively with GE using PREVU, then GE's acquisition of InnoServ could not have substantially reduced competition. If, as the United States concluded, PREVU was regarded by some in the industry as an important competitive tool and that it made InnoServ a good alternative to GE for many customers, then the divestiture of PREVU will restore that competition and thus remedy the antitrust violation alleged in the Complaint.

The United States have been investigating markets for servicing medical imaging equipment for several years, both in connection with this transaction and in the Montana case.[3] Based on the evidence it has gathered in these matters, the United States determined that for more complicated types of imaging equipment, such as CT scanners and MRIs, diagnostic software such as GE's own software and InnoServ's PREVU allow service engineers to service and repair equipment much more quickly and efficiently. For that reason, ISOs that have access to diagnostic software for servicing imaging equipment have a competitive edge over those that do not. InnoServ was one of the very few ISOs that had developed advanced diagnostic software designed to be used to service GE imaging equipment. Although PREVU is not as fast or sophisticated as GE's own diagnostic software, it made

[2] A court may decline to enter a proposed final judgment unless the parties accept certain conditions, *see, e.g., United States* v. *American Tel. & Tel. Co.,* 552 F. Supp. 131, 225 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983), but if the parties do not agree to those conditions, the court's only choices are to enter the final judgment the parties proposed or leave the parties to litigate the case.

[3] As explained in more detail in Section II(A)(4), the Montana case involved a challenge to restrictions GE had imposed on over 500 hospitals that had licensed its advanced diagnostic software used to maintain GE imaging equipment. These restrictions prevented the hospital licensees from competing with GE to service third-party medical equipment.

InnoServ's engineers more efficient than they would have been without any software at all. Thus, the United States concluded that PREVU gave InnoServ a competitive advantage over other ISOs and made it an effective competitor to GE. The United States also concluded that PREVU was sufficiently important to InnoServ's competitiveness that GE's divestiture of PREVU would offset to a large extent the competitive harm flowing from the merger.

The fact that PREVU is not as sophisticated or efficient as GE's own software does not mean that InnoServ was not an effective competitor, that the proposed Final Judgment is not in the public interest, or that this Court must insist that GE license its own software. PREVU made InnoServ a closer competitor to GE than it would have been without any diagnostic software at all. InnoServ was able to compete with GE by, among other things, offering service at lower prices than GE offered. The proposed Final Judgment need only address the anticompetitive effects flowing from the merger. It does so by requiring GE to divest PREVU, which will enable its purchaser to compete as effectively as InnoServ did against GE.

Because the United States' conclusions concerning PREVU's competitive significance were based on its evaluation of customer demand for the services InnoServ offered, not a technical comparison between PREVU and GE's software, providing the ''detailed description'' of PREVU requested by ISNI would not facilitate evaluation of the proposed Final Judgment. To the extent ISNI seeks such a description to enable its members to determine whether they are interested in purchasing PREVU, they may obtain it directly from GE. The proposed Final Judgment obligates GE to provide the kind of information about PREVU ''customarily provided in a due diligence process'' to all bona fide prospective purchasers. (Proposed Final Judgment ¶ IV(C)).

ISNI also requests information about whether others have purchased or licensed PREVU from InnoServ, or have expressed an interest in doing so. Prior to this transaction, InnoServ offered to license PREVU, in conjunction with a parts contract, to hospitals and other equipment owners wishing to service their own equipment. At least 15 InnoServ customers elected to license PREVU in this way. Since GE's acquisition of InnoServ, more than a dozen entities have expressed to GE some interest in the possible purchase of PREVU pursuant to the proposed Final Judgment. GE is currently negotiating with some of these companies regarding such a purchase.

Finally, ISNI requests an explanation of why it is not anticompetitive for GEMS to retain a non-exclusive license to use PREVU. The proposed Final Judgment permits GE to retain a license to use PREVU under very limited conditions: (i) to fulfill InnoServ service contracts in effect on the date GE acquired InnoServ; (ii) in connection with fulfilling any service contracts resulting from written proposals made by InnoServ to prospective customers that were outstanding on that date, provided that any such contract is entered into within 90 days thereafter; and (iii) in connection with fulfilling any renewals of any service contracts described in (i) or (ii), so long as the renewal was entered into prior to any sale of PREVU by GE or a trustee. (Proposed Final Judgment ¶ IV(E)). GE's license to use PREVU under these limited conditions expires, for each such service contract, on the expiration date of the contract in effect on the date that PREVU is sold. (*Id.*). These provisions were included in the proposed Final Judgment solely for the convenience of any InnoServ customers who want to continue to have their equipment serviced with PREVU. Requiring GE to stop using PREVU before it is divested would deny those customers their preferred service option without promoting competition.

2. The Relevant Markets

ISNI contends that additional information must be provided about the relevant markets alleged in the Complaint in order to determine the effect of the proposed Final Judgment on those markets. It requests, at a minimum, information relating to how these markets were defined, the structure of these markets, the number of firms competing in them, the market share of each such firm, and an analysis of the effect of the proposed Final Judgment on price, output, consumer choice, and product quality (Appendix 1, ISNI Comment at 13).

The detailed information about market definition and structure that ISNI has requested will not assist the Court in evaluating whether GE's divestiture of PREVU will ameliorate the anticompetitive effects of its acquisition of InnoServ. The number of firms competing in each market, and each firm's market share, are relevant only to assessing the competitive effects of the acquisition itself. The issue of whether the United States should have filed a lawsuit in the first place is not before the court in a Tunney Act proceeding. Under the proposed Final Judgment, the acquirer of PREVU will be free to offer service throughout the United States, and the structure of each market is therefore not important to understanding how the proposed Final Judgment will affect competition in that market.

Moreover, the thirteen paragraphs in the Complaint devoted to market definition and anticompetitive effects (Complaint ¶¶ 9–19) provide sufficient information for industry participants such as ISNI to comment on the adequacy of the proposed Final Judgment. The Complaint alleges that the sale of service for each model of medical imaging equipment is a separate product market (*id.* ¶ 12) and that the geographic markets are local, with the precise boundaries differing depending on the type of equipment involved and other factors (*id.* ¶ 17). Prior to its acquisition by GE, InnoServ engineers were servicing approximately 13 different models of GE CT scanners and 6 models of GE MRIs, in addition to several other types of GE imaging equipment (for example, ultrasound, cath lab, and mammography machines). InnoServ offered service within a 100-mile radius of 36 metropolitan areas. Therefore, there are over 650 markets potentially affected by this acquisition. To answer each of ISNI's sweeping requests for each of these markets would be burdensome and effectively require the United States to do much of the work it would have had to do if it were litigating this case. One of the major benefits of antitrust consent judgments is that they enable the government ''to reallocate necessarily limited (enforcement) resources,'' Microsoft, 56 F.3d at 1459, a benefit that would be lost if the United States were forced to compile and disclose this kind of information during a Tunney Act proceeding.

3. Alternative Purchasers of InnoServ

ISNI also requests information about companies other than GE, if any, that expressed an interest in acquiring InnoServ. Specifically, it asks the United States to identify any such companies, to state whether there was an appraisal conducted by a third party of the value of InnoServ or PREVU, and to state how long InnoServ was on the market. This information is necessary, in ISNI's view, to determine whether there was a serious suitor of InnoServ that would have been a preferable purchaser from the standpoint of the antitrust laws but that lost to GE in a bidding war (Appendix 1, ISNI Comment at 14–15).

ISNI fails to explain what relevance this information could have to an

evaluation of whether the proposed Final Judgment is in the public interest. Such information could be relevant if the United States had elected not to challenge the transaction on the grounds that the parties had met the stringent criteria of the failing company defense.[4] But they did not, and the United States did not rely on such a defense in electing to file its Complaint and agreeing to the proposed Final Judgment. Thus, the information ISNI seeks is irrelevant to the issue before the Court.

4. The Montana Case

The United States noted in the CIS that, ''[i]n conjunction with this settlement, GE has also agreed to consent to all of the relief that the government was seeking in (the Montana case).'' ISNI requests additional information about the proposed Final Judgment reached in the Montana case. It cites GE's press release announcing the resolution of these two cases, in which it stated that ''[t]o obtain clearance to complete the InnoServ transaction, G.E. Medical Systems agreed to settle (the Montana case)'' (Appendix 1, ISNI Comment at 15). It asks for supporting evidence or explanation of statements in the CIS that ''[t]he United States evaluated the merits of the settlement proposals in each case independently, concluding that the proposed settlement of this case is in the public interest for the reasons stated herein, and that the proposed settlement of the Montana case is in the public interest for the reasons stated in the Competitive Impact Statement filed in that case today'' (*id.*). Finally, ISNI suggests that statements in the Montana CIS demonstrate that the relief in this case is not adequate and that the United States should have sought mandatory licensing of GE's own diagnostic software (*id.* at 16).

In the Montana case, filed in 1996, the United States challenged restrictions GE had imposed on over 500 hospitals that had licensed its advanced diagnostic software used to maintain and repair GE imaging equipment. These restrictions prevented hospital licensees from competing with GE to service any kind of medical equipment—whether manufactured by GE or another company—at other hospitals and clinics. Because GE's software was designed to be used on specific models of GE imaging equipment, the United States alleged that these anticompetitive restraints were not ancillary to GE's legitimate right to protect its intellectual property from misuse. As stated in the CIS in the Montana case, see 63 FR 40737 (July 30, 1998), the proposed Final Judgment in that case secures all of the relief that the United States was seeking by requiring GE to void the restrictive provisions in its existing licenses and commit not to impose such restrictions in the future. By eliminating these agreements not to compete from GE's licenses, the proposed Final Judgment in the Montana case will allow over 500 hospitals across the country to service third-party medical equipment if they so wish.

The United States evaluated the merits of this settlement and the Montana settlement independently and concluded that each was in the public interest. In the Montana case, the settlement provided all of the relief that the United States had been seeking from GE. In this case, the United States concluded that GE's divestiture of PREVU would adequately address the anticompetitive effects of its acquisition of InnoServ because it ensured that the PREVU software could remain in the marketplace. The simultaneous settlement of the two cases makes sense because the markets affected by the anticompetitive conduct challenged in the two cases overlap to some extent.[5] GE had been contesting the Montana action for more than two years. Its willingness to settle that litigation on the government's terms—regardless of GE's public explanation for doing so—advanced the public interest by allowing hospitals to service third-party medical equipment. That same relief also could help ameliorate some of the competitive effects of the InnoServ transaction. In these circumstances, the United States and GE agreed to settle both cases at the same time.

ISNI cites the Montana CIS to support its arguments that PREVU is inferior to GE's software, that a purchaser of PREVU will not be able to compete effectively with GE, and that the United States should have insisted that GE license its advanced diagnostic software to ISOs such as ISNI's members. PREVU is not as sophisticated or efficient as GE's own software, but hat fact is irrelevant to the issue of whether the proposed Final Judgment is in the public interest. The United States concluded that PREVU made InnoServ a more effective alternative to GE. The proposed Final Judgment need only address the anticompetitive effects flowing from the merger, and it does so by requiring GE to divest PREVU to a purchaser that, in the United States' judgment, has the ''managerial, operational, and financial capability to compete effectively.'' (Proposed Final Judgment ¶ IV(B)). Requiring GE to license its own software might well create more competition than existed in the market prior to the InnoServ transaction. But the relief in this case need only address the anticompetitive effects flowing from the merger challenged in the Complaint; it need not create more competition than existed prior to GE's acquisition. The software that would otherwise be eliminated from the market by this merger is PREVU, not GE's software, so requiring GE to divest PREVU is clearly relief that is in the public interest.

The Complaint in this case challenged GE's acquisition of InnoServ, not its longstanding policy of not licensing its own software to ISOs. ISNI ''would have it be otherwise, but [does not] have the power to force the government to make that claim. And since the claim is not made, a remedy directed to that claim is hardly appropriate.'' Microsoft, 56 F.3d at 1460.

5. There Are No ''Determinative'' Documents

ISNI characterizes as ''incredible'' the CIS's statement that there were no determinative materials or documents within the meaning of the APPA that were considered in formulating the proposed Final Judgment. It argues that the Court should order the United States to produce certain documents that ISNI believes ''must exist'': documents providing the good-faith basis for the filing of the Complaint; third-party analyses or evaluations of InnoServ and/or PREVU; documents relating to the efforts of others, if any, to acquire InnoServ; documents supporting

[4] Under the failing company defense, an otherwise anticompetitive merger does not violate the antitrust laws if one party faces the ''grave probability of business failure,'' would not be able to reorganize successfully under Chapter 11 of the Bankruptcy Act, has made unsuccessful good-faith efforts to elicit reasonable alternative offers from competitively-preferable purchasers, and absent the acquisition, the assets of the company would exit the relevant market. *United States* v. *Greater Buffalo Press, Inc.*, 402 U.S. 549, 555 (1971); *Citizen Publishing Co.* v. *United States*, 394 U.S. 131, 136–37 (1969); U.S. Department of Justice and Federal Trade Commission, Horizontal Merger Guidelines § 5.1 (issued April 2, 1992), reprinted in 4 Trade Reg. Rep. (CCH) ¶ 13,104 (1992) and 57 Fed. Reg. 41,552 (1992). During the course of its investigation, the United States did review InnoServ's finances and its attempts to sell the company, but ultimately the decision to accept the proposed Final Judgment was not based on issues relating to the failing firm defense.

[5] The agreements challenged in the Montana case had their greatest anticompetitive effects in more rural areas, where the licensee hospitals were likely to be among the few, if not only, potential competitors to GE. In contrast, InnoServ tended to compete mostly within a 100-mile radius of larger metropolitan areas (Complaint ¶ 18). Nevertheless, there was at least some overlap in the geographic markets affected by the two cases.

conclusory statements in the CIS regarding how the divestiture of PREVU will increase competition; and documents comparing PREVU to GE's own advanced diagnostic materials. (Appendix 1, ISNI Comment at 16–18).

The Tunney Act requires, in pertinent part, that the United States make available to the public copies of the proposed Final Judgment ''and any other materials and documents which the United States considered determinative in formulating such proposal.'' 15 U.S.C. § 16(b) (emphasis added). Thus, the United States is required to disclose only those documents that the United States considered determinative in its decision to settle the case on the terms set forth in the proposed Final Judgment. Documents that were determinative in the decision to file the case need not be disclosed. During Senate hearings on the Tunney Act, one witness specifically urged that ''as a condition precedent to * * * the entry of a consent decree in a civil case * * * the Department of Justice be required to file and make a matter of public record a detailed statement of the evidentiary facts on which the complaint * * * was predicated.'' [6] Congress, however, rejected that recommendation. ISNI's broad request for the documents providing the good-faith basis for filing the Complaint is contrary to the plain language of the Tunney Act and its legislative history and should be denied.

ISNI's other requests similarly fall outside the scope of what courts have interpreted to be determinative documents. Just last year, the United States Court of Appeals for the District of Columbia Circuit, in a case brought by the Antitrust Division challenging certain portions of the American Bar Association's law school accreditation activities, held that a third party was not entitled to a wide range of documents in the government's files. *Massachusetts School of Law at Andover, Inc.* versus *United States (''MSL'')*, 118 F.3d 776 (D.C. Cir. 1997). In that case, the United States asserted that the determinative documents provision referred ''only to documents, such as reports to the government, 'that individually had a significant impact on the government's formulation of relief—i.e., on its decision to propose or accept a particular settlement.' '' *Id.* at 784. The court held that both the statutory language and the legislative history supported this interpretation. Indeed, the court noted that during the Senate debate on the Tunney Act, Senator Tunney himself cited a report to the government by an outside expert analyzing the economic consequences of proposed relief in an earlier case as exemplifying a ''determinative document.'' *Id.*[7] The Court also considered a broad disclosure requirement to be inappropriate because it would directly interfere with the United States' ability to negotiate settlement agreements. *Id.* at 784–85. Similarly, in another recent Antitrust Division case the Second Circuit held that ''the range of materials that are 'determinative' under the Tunney Act is fairly narrow'' and that only documents that were ''a substantial inducement to the government to enter into the consent decree'' should be subject to disclosure. *United States* versus *Bleznak, et al.*, 153 F.3d 16, 20–21 (2d Cir. 1998).[8]

ISNI has given no reason to doubt the United States' assertion that there are no determinative documents in this case. The United States did not receive any expert reports concerning the effects of requiring GE to divest PREVU, and there are no documents that constituted a substantial inducement to the United States to enter into the proposed Final Judgment. The decision to settle on these terms was based on an assessment of the importance of diagnostic software generally and of PREVU specifically, and there is no document that had a determinative impact on that assessment.

6. The Court Should Deny ISNI's Request To Intervene and To Appoint a Special Master

ISNI requests this Court to permit it to intervene to aid the Court in its public interest determination (Appendix 1, ISNI Comment at 3, 18–19). In order to intervene in this case, ISNI must first file a motion with this Court and upon each party to this action.[9] If it does so, the United States will respond fully to that motion. From its informal intervention request, however, it appears that ISNI should not be granted intervenor status.

''The general rule * * * has been that private parties will not be allowed to intervene in government antitrust litigation.'' 7C Wright, Miller and Kane, Federal Practice and Procedure 2d § 1908 at 266 (1986). In this District alone, applications for intervention have been denied in several Tunney Act cases. *United States* versus *The Thomson Corp., et al.*, 1996–2 Trade Cas. (CCH) ¶71,620, 78,386 (D.D.C. 1996); *United States* versus *Microsoft Corp.*, 159 F.R.D. 318, 328 (D.D.C.), rev'd on other grounds, 56 F.3d 1448 (D.C. Cir. 1995); *United States* versus *Airline Tariff Publ'g Co.*, 1993–1 Trade Cas. (CCH) ¶70,191, at 69,894 (D.D.C. 1993); *United States* versus *Stroh Brewery Co.*, 1982–2 Trade Cas. (CCH) ¶64.804, at 71,959–61 (D.D.C. 1982); *United States* versus *American Tel. & Tel. Co.*, 1982–2 Trade Cas. (CCH) ¶64,726, at 71,524–26 (D.D.C. 1982).

The eligibility requirements for intervention are the same in a Tunney Act proceeding as in any other case and are set forth in Rule 24 of the Federal Rules of Civil Procedure. 15 U.S.C. § 16(f)(3)(in making public interest determination, court may authorize ''intervention as a party pursuant to the Federal Rules of civil Procedure''); MSL, 118 F.3d at 780 n.2 (11the Tunney Act looks entirely to Fed.R.Civ.P.24 to supply the legal standard for intervention''). A third party may be granted intervention either as ''of right'' under rule 24(a) or ''permissive[ly]'' under Rule 24(b). ISNI's request does not meet the standards under either provision.

To intervene as of right, ISNI must show that it has ''an interest relating to the property or transaction which is the subject of the action and [that it] is so situated that the disposition of the action may as a practical matter impair

[6] The Antitrust Procedures and Penalties Act: Hearings on S. 783 and S. 1088 Before the Subcommittee on Antitrust and Monopoly of the Senate Judiciary Committee, 93d Congress., 1st Sess. 26, 57 (1973) (prepared statement of Maxwell M. Blecher, attorney).

[7] Congress enacted the Tunney Act in response to consent judgments entered in 1971 in three cases involving acquisitions by International Telephone and Telegraph Corporation (''ITT''), including that of the Hartford Fire Insurance Company. The consent judgments permitted ITT to retain Hartford. Subsequent Congressional hearings revealed that the Antitrust Division had employed Richard J. Ramsden, a financial consultant, to prepare a report analyzing the economic consequences of ITT's possible divestiture of Hartford. Ramsden concluded that requiring ITT to divest Hartford would have adverse consequences on ITT and on the stock market generally. Based in part on the Ramsden Report, the United States concluded that the need for the divestiture of Hartford was outweighed by the divestiture's projected diverse effects on the economy. In explaining the determinative documents provision, Senator Tunney stated, ''I am thinking here of the so-called Ramsden memorandum which was important in the ITT case.'' 119 Cong. Rec. 24,605 (1973).

[8] The single case cited by INSI—*United States* versus *Central Contracting Co.*, 537 F. Supp. 571 (E.D. Va. 1982)—has not been followed by any other court. Moreover, even that opinion recognized that the Tunney Act ''does not require full disclosure of Justice Department files, or grand jury files, or defendant's files, but it does require a good faith review of all pertinent documents and materials and a disclosure of'' those ''material and documents that substantially contribute to the determination [by the government] to proceed by consent decree * * *.'' *Id.* at 577.

[9] Fed.R.Civ.P. 24(c) states that ''[a] person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought.''

or impede [its] ability to [protect that interest. Unless [it is] adequately represented by existing parties.'' Fed. R. Civ. P. 24(a)(2).[10] ISNI's primary ''interest'' in this proceeding seems to be in using a broad public interest inquiry to obtain for its members access to GE's advanced diagnostic software. (Appendix 1, ISNI Comment at 7, 16, 19). But the entry of the proposed Final Judgment will not impair or impede any interest ISNI or its members may have in obtaining a license to GE's software both because this case related solely to GE's acquisition of InnoServ, not its software licensing policies, *see* Sections II(A)(1), (4), and because even it this case did deal with GE's licensing policies, entry of the proposed Final Judgment would not affirmatively set back ISNI's pursuit of that interest. See MSL, 118 F.3d at 780 (movant ''points to no case equating failure to promote an interest with its impairment''). Nor can ISNI use an appeal to protecting the ''public interest'' to support its request for intervention. Private parties ''are not entitled to intervene simply to advance their own ideas of what the public interest requires. In federal antitrust litigation, it is the United States, not private parties, which 'must alone speak for the public interest.' '' *United States* versus *G. Heileman Brewing Co.,* 563F. Supp. 642, 648 (D. Del. 1983) (*quoting Buckeye Coal & Ry. Co.* versus *Hocking Valley Ry. Co.,* 269 U.S. 42, 49 (1925)). Therefore, ''[a] private party generally will not be permitted to intervene in government antitrust litigation absent some strong showing that the Government is not vigorously and faithfully representing the public interest.'' *United States* versus *Haftford-Empire Co.,* 573 F.2d 1, 2 (6th Cir. 1973), *quoted with approval in United States* versus *LTV Corp.,* 746 F.2d 51, 54 n.7 (D.C. Cir. 1984). thus, intervention of right in support of the public interest is allowed, if at all, only after a showing of bad faith or malfeasance on the part of the government. *United States* versus *Associated Milk Producers, Inc.,* 534 F.2d 113, 117 (8th Cir. 1976); G. Heileman Brewing, 563 F. Supp. at 649. While it is not evident that ISNI has even alleged bad faith or malfeasance, it is clear that it neither has made nor can make this necessary showing because the United States has acted properly and in good faith.

ISNI also fails to meet the requirements for permissive intervention. Under Rule 24(b)(2), an applicant may intervene when its ''claim or defense and the main action have a question of law or fact in common.''[11] The words ''claim or defense'' refer to ''the kinds of claims or defenses that can be raised in courts of law as part of an actual or impending law suit.'' *Diamond* v. *Charles,* 476 U.S. 54, 76 (1986). ISNI has made no showing that it has such a ''claim or defense'' here. In addition, a court ''must consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.'' Fed R. Civ. P 24(b). As Judge Greene noted in the *AT&T* case, any rights granted to an intervenor in a Tunney Act proceeding are likely to impose burdens on the judicial process:

> It could be argued that these include the right to file counterclaims and cross-claims, to adduce witness testimony and other evidence, and to appeal from orders of the Court. Such parties might also be contended to have the implicit right to veto any settlement simply by withholding their consent—a result that would in practice void the instant settlement proposal (whatever its substantive merit) and that would eliminate consent decrees as an option in antitrust cases generally (since someone would always or almost always be dissatisfied).

AT&T, 1982–2 Trade Cas. (CCH ¶ 64,726 at 71,525 n.7. ISNI has already attempted to expand this Tunney Act proceeding far beyond its proper scope by suggesting that the United States should have challenged previous transactions by GE, by arguing that GE should be required to license its own diagnostic software to ISNI's members, and by requesting a wide-ranging public interest inquiry in which ''fact gathering akin to discovery'' will take place. (Appendix 1, ISNI Comment at 7–8, 16, 19). Therefore, there is a particularly high risk that its intervention as a party would unnecessarily delay and complicate this Court's public interest determination. See Thomson Corp. 1996–2 Trade Cas. (CCH) ¶ 71,620, at 78,386 (D.D.C. 1996) (court denies motion to intervene by Lexis-Nexis, which suggested possibility of taking third-party depositions).

ISNI has also not shown why its intervention is necessary given that it has already submitted its extensive Comments. Congress provided the 60-day notice and comment period as a means by which interested parties such as ISNI could express concerns about proposed antitrust settlements in cases brought by the United States. ISNI has done so, and its intervention will constitute an unnecessary delay. See Airline Tariff Publ'g Co., 1993–1 Trade Cas. (CCH) ¶ 70,191, at 69,894 (D.D.C. 1993) (motion to intervene denied when movant's comments ''will enable [movant] to inform the Court and all parties of the effects of the proposed decree on its members''); Stroh Brewery Co., 1982–2 Trade Cas. (CCH ¶ 64,804, at 71,960 (D.D.C. 1982) (motion to intervene denied, in part, because movant ''fully able to express its concerns utilizing the comment procedures of the Tunney Act'').

In a few cases, courts have permitted third parties with greater interests than ISNI's to intervene on a very limited basis. For example, in the case challenging the merger of The Thomson Corporation and West Publishing Company, Hyper Law, Inc. (a small publisher) was permitted to intervene solely for the purpose of appealing entry of the final judgment after Judge Freidman concluded that it had ''sufficiently demonstrated that it will suffer actual, concrete, particularized injury traceable to the entry of the Final Judgment * * *.'' Thompson Corp., 1997–1 Trade Cas. (CCH) ¶ 71,735, at 79,182 (D.D.C. 1997). Similarly, the D.C. Circuit in the MSL case permitted the Massachusetts School of Law, the plaintiff in a parallel treble-damage action against the American Bar Association, to intervene in the government's case solely for the purpose of appealing its claim of entitlement in a Tunney Act proceeding to certain documents that it might not be able to obtain through discovery in its own case, a claim which entry of the final judgment would decisively impair. MSL, 118 F.3d at 781–82. In the Antitrust Division's case against market-makers in NASDAQ securities, the district court permitted private plaintiffs in parallel actions to intervene in the Tunney Act proceeding for what the court described as ''two very limited purposes'': filing a motion for disclosure of a single document and the underlying evidence cited therein for use in the private litigation; and raising an objection to a single provision of the proposed consent judgment that could have restricted use of potential evidence. *United States* v. *Alex. Brown & Sons, Inc., et al.,* 169 F.R.D. 532, 539 (S.D.N.Y. 1996). The court limited the role of the intervenors to ''submitting comments on the decree, engaging in oral argument, and filing appeals.'' *Id.* And, although ISNI itself was allowed to intervene in the case involving the modification of the 1956 consent

[10] Rule 24(a)(1) provides for intervention as of right when a statute confers an unconditional right to intervene, but the Tunney Act does not do so. *See* 15 U.S.C. § 16(f).

[11] Rule 24(b)(1) provides for intervention when a statute confers a conditional right to intervene. The Tunney Act provides for intervention, but expressly refers back to the Federal Rules of Civil Procedure. 15 U.S.C. § 16(f)(3); see MSL, 118 F.3d at 780 n.2.

judgment against IBM, its rights were limited to appealing the court's entry of the modified order (Appendix 1, ISNI Comment at 4; Appendix 2, Betzner Decl., Exh. C). In an earlier opinion, ISNI's attempt to intervene in the district court proceedings ''to conduct discovery, present evidence, introduce new issues, and otherwise influence the pace and direction of the proceedings'' was denied. *United States* v. *International Business Machines Corp.*, 1995–2 Trade Cas. (CCH) ¶ 71,135, at 75,459 (S.D.N.Y. 1995).[12]

These cases offer no support of ISNI's broad request to intervene in this case. ISNI has not made a showing that it will suffer injury from the entry of the proposed Final Judgment. It is not, as far as the United States is aware, involved in litigation against GE relating to the issues in this case. And, in contrast to the very limited rights afforded intervenors in the cases discussed above, ISNI apparently foresees a virtually unlimited role for itself, which will include engaging in ''fact gathering akin to discovery'' (Appendix 1, ISNI Comment at 19). ISNI intervention request falls far short of the requirements set forth in Rule 24 and should be denied.)

Finally, ISNI notes that the APPA permits a Court to appoint a special master to aid in its public interest determination (Appendix 1, ISNI Commend at 18–19). Under 15 U.S.C. § 16(f), the Court may, among other things, take testimony of Government officials and experts or appoint a special master to assist it in making its public interest determination. These procedures are discretionary, however, and the Court need not invoke any of them unless it believes that significant issues have been raised and that further proceedings would aid the court in resolving those issues. See S. Rep. No. 298, 93d Cong., 1st Sess. 6–7 (1973); H.R. Rep. No. 1463, 93d Cong., 2d Sess. 8–9 (1974). The appointment of a special master in government antitrust cases is extremely rare. Indeed, the United States has been unable to locate any case in which a court has appointed a special master to assist it during a Tunney Act proceeding. ISNI's Comments do not raise any issues that would justify taking this extraordinary step.

7. The Court Need Not Hold a Hearing in Making Its Public Interest Determination

In the event the Court denies ISNI's requests for intervention and the appointment of a special master, ISNI requests that a hearing be held in which it can reply to the United States' Response to its Comments. (Appendix 1, ISNI Comment at 19). The Tunney Act does not provide third parties with a right to reply, however, and Congress ''anticipated that the trial judge will adduce the necessary information [for making a public interest determination] through the least complicated and least time-consuming means possible.'' S. Rep. No. 298, 93d Cong., 1st Sess. 4 (1973). The United States believes that a hearing is unnecessary because ISNI has already adequately expressed its views through the public comment procedure. See G. Heileman Brewing Co., 563 F. Supp. at 650 (court denies request for evidentiary hearing when ''those same issues have already been raised by movants through the APPA's third-party comment procedure); *United States* v. *Carrols Development Corp.*, 454 F. Supp. 1215, 1221–22 (N.D.N.Y. 1978) (request for limited participation denied when ''the moving parties have set forth their views in considerable detail in briefs and affidavits filed with this Court as well as in written comments submitted to the Government under the APPA''). If, however, the Court determines that a hearing would be useful in making its public interest determination, the United States would not object to ISNI's appearance as an *amicus curiae.*

B. Supplemental Comment of ISNI

ISNI submitted a Supplemental Comment on September 16, 1998, the day that GE issued a press release announcing that it had completed its acquisition of InnoServ. ISNI contents that the fact that GE acquired InnoServ before the end of the 60-day notice and comment period under the APPA, and before the Court's approval of the proposed Final Judgment, ''undermines and disrespects the processes of the APPA'' and makes it more difficult for the United States to withdraw its consent to the entry of the proposed Final Judgment. (Appendix 3, ISNI Supplemental Comment at 2).

The vast majority of mergers challenged by the government are resolved by consent in the form of proposed final judgments that call for some form of divestiture. It is customary in such circumstances to permit the parties to merge at the time that the complaint and proposed final judgment are filed, subject to the parties' obligations under the proposed final judgment. For example, since October 1996 in this District alone, the United states has filed 13 cases challenging mergers that were settled on terms requiring a divestiture or some other relief. In each of these cases, the parties were allowed to merge prior to the close of the comment period and entry of the final judgment by the court. The parties in such cases understand that the proposed final judgment is subject to public comment, that the United States may revoke its consent at any time before the final judgment is entered, and that the final judgment will not be entered unless a court finds that it is in the public interest.

Parties are willing to assume this risk for legitimate business reasons. With many mergers, time is of the essence. Parties to mergers often designate a date certain on which either party may terminate the agreement if the merger has not been effected. The United States challenges numerous mergers because of competitive problems that can be fixed through a divestiture of assets rather than an injunction against the transaction as a whole. Often the parties to such mergers are willing to agree to such divestitures in exchange for the right to consummate their transaction in a timely manner. If the United States refuse to allow such mergers to proceed until after the 60-day notice and comment period plus any additional time the court required to make its public interest determination, many defendants might refuse to settle and force the government seek emergency injunctive relief from a court.[13]

The fact that GE might complete its acquisition of InnoServe before the entry of the proposed Final Judgment was disclosed in the Stipulation and Order, which was filed on the same day as the Complaint and other court papers. The Stipulation included a paragraph requiring the defendants to comply with the proposed Final Judgment once GE acquired InnoServ, even if that occurred prior to the Court's approval and entry of the judgment.[14]

[12] See also *United States* v. *American Cyanamid Co.*, 556 F. Supp. 357, 359–61 (S.D.N.Y. 1982) (permissive intervention granted because ''time consuming and expensive discovery demands often asserted by intervening parties will not be endured here. Applicants seek only to preserve their right to appeal * * * and participate in such further proceedings as this Court may direct on its own motion''), *aff'd.* 719 F.2d 558 (2d Cir. 1983); *United States* v. *American Tel. & Tel. Co.*, 552 F. Supp. at 219 (in case involving the dissolution of the world's largest corporation and the restructuring of the telecommunications industry, third parties allowed to intervene to appeal entry of the consent judgment, participate in post-judgment proceedings, and appeal from order approving AT&T's reorganization plan).

[13] In addition, permitting parties to merge quickly is precompetitive because it hastens the divestiture of the competitively important assets to a third party with the incentive and capability of competing vigorously against the acquiring party to the merger.

[14] ''The defendants agree to comply with the proposed Final Judgment pending its approval by

Likewise, the proposed Final Judgment itself gives GE ''180 calendar days from the filing of the Complaint in this action or five days after notice of entry of this Final Judgment by the Court, whichever is later, to sell InnoServ's PREVU diagnostic package * * *.'' (Proposed Final Judgment ¶IV(A)). Both of these provisions clearly envision that GE might acquire InnoServ, and thus begin its efforts to sell PREVU, before the Court's entry of the proposed Final Judgment.

Moreover, contrary to ISNI's assertion, GE's acquisition of InnoServ on September 16 does not make it more difficult for the United States to withdraw its consent to the proposed Final Judgment. Nor does it preclude this Court from evaluating whether entry of the proposed Final Judgment is in the public interest or declining to enter the order if it believes the settlement is unacceptable. By consummating its acquisition of InnoServ, GE has assumed the risk that the United States might withdraw its consent and proceed to trial or that this Court may decline to enter the proposed Final Judgment.[15]

C. Comment of Star Technologies

Star Technologies (''Star'') of Potomac, Maryland also submitted a Comment expressing concerns about the potential sale or license of InnoServ's PREVU software. Star manufacturers array processors used in conjunction with certain models of GE's CT scanners. Star has also developed diagnostic software, called Star Maintenance Software (''SMS''), for testing its array processors and has licensed SMS to numerous customers for their own internal use. Although InnoServ is a customer of Star for the repair of certain circuit boards, Star does not believe that InnoServ has licensed SMS in the past. Based on recent discussions with InnoServ, however, Star believes that PREVU incorporates, or in some way, uses SMS. Star is therefore interested in identifying any purchasers or licensees of PREVU so that it can seek to enforce its intellectual property rights by requiring any such buyer or licensee to sign a SMS license. (Appendix 4, Star Technologies Comment at 1–2).

The United States has informed Star that GE, since its September 16 acquisition of InnoServ, is the current owner of PREVU. It has also advised GE of Star's claim of potential infringement. This dispute properly is between Star and GE, and the proposed Final Judgment does not affect the rights of anyone involved in this dispute. In any sale of assets, the seller discloses all such liens and claims against the assets being sold, and GE will presumably do so when selling PREVU. So, too, will the trustee, in selling or licensing PREVU, if GE fails to sell PREVU within the time prescribed by the proposed Final Judgment. The proposed Final Judgment does not affect Star's intellectual property rights in any way, and does not affect Star's ability to locate the owner or licensees of PREVU any more than if InnoServ has decided to sell PREVU on its own.

III. Legal Standard Governing the Court's Public Interest Determination

Pursuant to the APPA, the United States is submitting these public comments and this Response to the Federal Register for publication. 15 U.S.C. § 16(d). Upon their publication, the United States will have fully complied with the APPA and will file a motion requesting that this Court enter the proposed Final Judgment. After receiving that motion, the Court must determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e). In doing so, as our motion for entry of the proposed Final Judgment will explain, the Court must apply a deferential standard and should withhold its approval only under very limited conditions. In the MSL case, the D.C. Circuit stated that ''constitutional questions would be raised if courts were to subject the government's exercise of its prosecutorial discretion to non-deferential review,'' and stated that a court should withhold approval of a proposed final judgment ''only if any of the terms appear ambiguous, if the enforcement mechanism is inadequate, if third parties will be positively injured, or if the decree otherwise makes 'a mockery of judicial power.' '' MSL, 118 F.3d at 783, quoting Microsoft, 56 F.3d at 1462. As Judge Greene observed in the AT&T case:

> If courts acting under the Tunney Act disapproved proposed consent decrees merely because they did not contain the exact relief which the court would have imposed after a finding of liability, defendants would have no incentive to consent to judgment and this element of compromise would be destroyed. The consent decree would thus as a practical matter be eliminated as an antitrust enforcement tool, despite Congress' directive that it be preserved.

AT&T, 552 F. Supp. at 151. As this Response makes clear, the relief mandated by the proposed Final Judgment is well within the reaches of this public interest standard.

IV. Conclusion

After careful consideration of these public comments, the United States has concluded that entry of the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violation alleged in the Complaint, and is therefore in the public interest. Once these comments and this Response are published in the Federal Register, the United States will move the Court to enter the proposed Final Judgment.

Dated: November 17, 1998.

Respectfully submitted,

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Appendix 1

United States of America, Department of Justice, Antitrust Division, 325 7th Street, NW, Suite 300, Washington, DC. 20530, *Plaintiff,* v. *General Electric Company,* 3135 Easton Turnpike, Fairfield, Connecticut 06431, and *InnoServ Technologies, Inc.,* 320 Westway, Suite 530, Arlington, Texas 76018, *Defendants.* Case Number 1:98CV01744. Judge: Royce C. Lamberth.

Public Comment of Independent Service Network International Pursuant to 15 U.S.C. § 16(b),(d)

Pursuant to 15 U.S.C. § 16(b),(d), of the Antitrust Procedures and Penalty Acts (''APPA'') Independent Service Network International (''ISNI''), a trade association of 157 maintainers of high technology equipment, including medical equipment of the type at issue in this matter,[1] submits this public

the Court, and shall, from the date of signing this Stipulation, comply with all the terms and provisions of the proposed Final Judgment as though it were in full force and effect as an order of the Court, provided, however, that defendants shall not be bound by the terms and provisions of the proposed Final Judgment unless and until the closing of any transaction in which General Electric Company directly or indirectly acquires all or any part of the assets or stock of InnoServ Technologies, Inc.'' (Stipulation and Order ¶3).

[15] The relief ISNI apparently prefers—the mandatory licensing of GE's diagnostic software to ISOs—also has nothing to do with the fact that GE has already acquired InnoServ. For the reasons stated above, the United States does not believe that this is an appropriate remedy for this acquisition. But if GE ultimately agreed to license it owns software, or was ordered to do so by this Court after a trial in this case, the fact that it has already acquired InnoServ would not make that licensing any more difficult.

[1] InnoServ Technologies, Inc., one of the defendants in the above-captioned case, is a member of ISNI, but, because of conflict of interest

Continued

comment to the Competitive Impact Statement (''CIS'') published in the **Federal Register** at 63 FR 39894.

I. Introduction

The CIS does not comply with the APPA because it does not provide the Court or the public with sufficient information to evaluate this consent decree. Information necessary for that evaluation includes the following:

1. A technical and economic evaluation of the key component of this settlement—InnoServ's PREVU advanced diagnostic package (''PREVU'')—to demonstrate that it can accomplish what the parties call ''the essence'' of this final judgment, *i.e.,* ''* * * to establish a viable competitor in the sale of service for certain models of G.E. diagnostic imaging equipment * * *'' 63 FR at 39894.

2. To define and describe the markets in which this ''essence'' of the consent decree is to be accomplished.

3. To provide information on other companies, if any, that expressed an interest in purchasing InnoServ and that would present less competitive problems than General Electric Medical Systems (''GEMS'') as an acquirer.

4. To describe and provide, pursuant to APPA §§ (b) and (c), materials and documents which the United States considered determinative in formulating the consent decree so that there can be meaningful public comment (the assertion in the CIS that there are no such materials or documents is, as a District Court stated in a similar case, ''incredible,'' *U.S.* v. *Central Contracting Co., Inc.,* 537 F. Supp. 571, 576 (1982)).

5. The relationship, if any, between this settlement and *United States* v. *General Electric Co.,* No. CV–96–121–M–CCL (D. Mont. filed August 1, 1996) (''Montana Case''), which GEMS stated it settled in order ''to obtain clearance to complete the InnoServ acquisition * * *'' *See,* Betzner Decl., Exhibit A.

Without the above information, it is not possible for the Court to make its public interest determination pursuant to § (e) of the APPA nor is it possible for the public to make meaningful comments on the CIS.

A public interest determination is particularly important in this case because it involves the cost of healthcare, a subject important to all Americans, because GEMS has a high market share in the relevant markets, which it has extended through recent aggressive transactions unopposed by the Government; and because there is no evidence that there is any legitimate reason for GEMS to acquire one of its few competitors, a company less than 1% its size. Therefore, pursuant to APPA § (f) and based on the showing detailed below, ISNI respectfully requests that the Court authorize ISNI to intervene as a party pursuant to the Federal Rules of Civil Procedure and that the Court appoint a special master to preside over the gathering of the information necessary to evaluate this CIS.

II. ISNI and Its Interest in This Proceeding

ISNI, an association of 157 independent service organizations, i.e., organizations servicing equipment manufactured by others (see Betzner Decl., Exhibit B for a list of members), is a nonprofit corporation incorporated in the District of Columbia. In competition with the service organizations of manufacturers, the members of ISNI service various types of high-technology equipment, including medical equipment of the type that is the subject of the CIS. ISNI's members account for over $1.5 billion in commerce.

The purpose of ISNI for the past fourteen years has been to promote and maintain a closer union and organization of independent service organizations. Specifically, ISNI develops educational methods to increase awareness about independent service organizations and studies economic and legal problems confronting them. ISNI also serves as a clearing house for information and data relating to its members' businesses and ISNI promotes better relations among providers, distributors and manufacturers of supplies and services.

ISNI has participated in various legal proceedings on behalf of its members. For example, ISNI, then known as Computer Service Network International, filed a friend-of-the-court brief which was cited by the United States Supreme Court in its landmark antitrust decision concerning service aftermarkets, *Eastman Kodak Co.* v. *Image Technical Services, Inc., et al.,* 504 U.S. 451, 462 n.6 (1992). Also, pursuant to the order of Chief Judge Thomas P. Griesa of the Southern District of New York (Betzner Decl., Exhibit C), ISNI has been granted the right to intervene for purposes of appeal in the proceeding concerning the termination of the IBM consent decree, *United States of America* v. *International Business Machines Corporation,* 52 CIV. 72–344 (TPG), currently pending the U.S. Court of Appeals for the Second Circuit. ISNI has filed a brief in that proceeding.

In his order, Judge Griesa found that ''ISNI has a legitimate interest in appealing from the May ruling, and it is in the public interest to allow ISNI to appeal'' (*Id.* at 2). Similarly, it is in the public interest for ISNI to intervene in this proceeding because a dwindling number of its members compete with GEMS in the markets alleged by the Justice Department in the complaint in this matter. The reasons that the number is dwindling are that GEMS has a large market share; it has aggressively extended that market share through the transactions described below, unopposed by the U.S. government; and its advanced diagnostics are an essential facility necessary to compete in the relevant markets.

The reasons that it is in the public interest for ISNI to intervene in this matter are cogently set forth in the Government's complaint in this matter (Betzner Decl., Exhibit J):

Paragraph 3: ''If G.E. acquires InnoServ, G.E. will increase its already high share in the markets for servicing certain models of G.E. imaging equipment on a discrete basis, particularly several models of CT scanners and MRI's, and it will eliminate an effective competitor in these markets. It will also substantially reduce competition in multi-vendor service markets. Unless blocked, this acquisition likely will result in higher prices for imaging equipment, maintenance and service.''

Paragraph 20: ''In many of these markets, InnoServ is one of the few ISOs that has specialized in servicing G.E. imaging equipment * * * the competition between G.E. and InnoServ in these markets has resulted in significant price reductions for consumers. G.E.'s acquisition of the InnoServ would eliminate this competition and increase G.E.'s already high share in the markets for servicing certain models of G.E. imaging equipment, particularly several models of CT scanners and MRIs. It would also substantially reduce competition in multi-vendor service markets.''

Paragraph 21: ''Successfully entry into the relative markets is difficult, time-consuming and costly. In general, customers prefer to purchase service from existing, reputable firms in the industry. Therefore, new entrants often find it difficult to enter on a scale necessary to succeed financially.''

Paragraph 23: ''G.E.'s proposed acquisition of InnoServ is likely to lessen competition substantially and tend to create a monopoly in interstate trading commerce in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.''

Paragraph 24: ''The transaction likely will have the following effects among others:

a. Actual and future competition between G.E. and InnoServ will be eliminated in the markets for servicing certain models of G.E. imaging equipment under discrete, machine-by-machine basis in numerous local markets throughout the United States;

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considerations, has not been informed of or consulted about this public comment. Similarly, this comment is not intended to express any views of Serviscope, an ISNI member acquired by GEMS in August, 1998. See attached Declaration of Claudia Betzner, para 6.

b. Competition generally in the markets for servicing certain models of G.E. imaging equipment on a discrete, machine-by-machine basis in numerous local markets throughout the United States will be lessened substantially;

c. Actual and future competition between G.E. and InnoServ will be eliminated in the markets for multi-vendor service in numerous local markets throughout the United States; and

d. Competition generally in the markets for multi-vendor service in numerous local markets throughout the United States will be lessened substantially.''

Despite these pernicious effects, the government has consented to this acquisition based essentially on the divestiture of PREVU. However, the parties have not provided this Court or the public with the fundamental information necessary to evaluate this settlement. ISNI, because of the expertise of its members and counsel, can aid the Court in obtaining and evaluating this information; ISNI respectfully requests that the Court grant ISNI the opportunity to do so pursuant to APPA § (f).

III. GEMS' Monopoly and Its Successful Efforts To Maintain and Extent It

According to its own press release, ''G.E. Medical Systems, based in Milwaukee, WIS., is a $4.5 billion global provider of medical diagnostic imaging systems, services and solutions with 16,000 employees worldwide.'' (Betzner Decl., Exhibit A.) As indicated by the quotations from the Government's complaint in Section II above, GEMS has a monopoly market share in the markets alleged by the government in its complaint: (1) servicing certain models of G.E. imaging equipment on a discrete machine-by-machine basis in numerous local markets throughout the United States, and (2) multi-vendor service in numerous local markets throughout the United States.

What is more alarming is that G.E. has extended and maintained this monopolistic market share by a number of aggressive transactions in recent years unopposed by the U.S. government:

- August, 1994: strategic alliance with Advanced NMR Systems, Inc., regarding very high field magnetic resonance systems. (Betzner Decl., Exhibit D.)
- June, 1995: five-year agreement with Columbia/HCA Healthcare Corp. covering the service of all diagnostic imaging equipment in the hospital chain, which at that time consisted of 320 hospitals. (*Id.*, Exhibit E.)
- February, 1996; acquisition of National Medical Diagnostics, Inc., which at the time of acquisition provided medical equipment maintenance services to 220 hospitals in 23 states. (*Id.*, Exhibit F.)
- August, 1996: acquisition of Specialty Underwriters, a seller of maintenance insurance to the healthcare industry, and Maintenance Management, which provides service for medical equipment. (*Id.*, Exhibit G.)
- August, 1997: investment of $5.1 million in Advanced NMR Systems, Inc., an extension of the August 1994 alliance described above. (*Id.*, Exhibit H.)
- December, 1997: five-year marketing pact with INPHACT, a provider of on-line radiology services for radiologists (*Id.*, Exhibit I.)
- August, 1998: acquired Serviscope, a medical equipment maintenance and asset management company that was one of the few potential candidates to compete with GEMS to acquire Innoserv. (*Id.*, at para 6.)

With each of these transactions, GEMS got stronger both absolutely and also relative to its much smaller ISO competitors. Innoserv, with revenues of $37 million a year, is described in the CIS as ''* * * one of the nation's largest independent service organizations ('ISOs'),'' 63 FR at 39898. That a $37 million a year company was considered of the largest competitors of a company 120 times its size in itself illustrates the weakness of GEMS' competitors.

Nonetheless, an ISO like Innoserv does provide customers with an alternative. This alternative keeps GEMS from having a 100% monopoly and also helps to keep prices down to a certain extent.

Eliminating that little spark of competition was the only logical motivation for GEMS to acquire InnoServ. This acquisition makes no sense except to eliminate one of the last vestiges of national competition for the service of GEMS imaging equipment. The fact that GEMS has since acquired one of the other remaining competitors—Serviscope—demonstrates that GEMS' goal is the lack of any meaningful service competition.

IV. Non-compliance With the APPA

Section (b)(3) of the APPA requires the CIS to recite ''an explanation of the proposal for a consent judgment, including an explanation of * * * relief to be obtained thereby, and the anticipated effects on competition of such relief,'' and § (e) requires this Court to determine that the entry of such judgment is in the public interest by considering ''the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment.'' As demonstrated below, the information required by § (b) has not been provided in the Competitive Impact Statement, and that fact disables the ISNI and other members of the public from making a ''meaningful public comment'' on its (APPA § (c)) and disables this Court from making its public interest determination pursuant to APPA § (e).

The following fundamental information is missing from the CIS: a technical and economic assessment of PREVU; a description of the markets involved in the settlement and the effect of the settlement on those markets; information about other firms, if any, that expressed interest in purchasing InnoServ; and information about the relationship of the simultaneous consent decree between the same two parties concerning a litigation in Montana that also involves GEMS' advanced diagnostics. The significance of the non-provision of these items of information will be discussed below.

A. The CIS Provides Nothing but Speculation About the Acknowledged Keystone of This Consent Decree, PREVU

The proposed stipulated final judgment of this litigation states that ''The *essence* of this Final Judgment is the prompt and certain divestiture through sale or licensing of certain rights or assets by the defendants to establish a viable competitor in the sale of service for certain models of G.E. diagnostic imaging equipment, and the sale of comprehensive asset-management or multi-vendor services, or in the licensing of advanced diagnostic software for use in any such service.'' 63 FR at 39894 (emphasis added). These ''rights or assets'' are PREVU, which is defined at 63 FR 39895.

But the CIS does not make a showing—or even try to make a showing—that PREVU *can* establish a viable competitor. One of the few things that the CIS says about PREVU is the conclusory statement that PREVU gives ''* * * InnoServ a competitive advantage in servicing certain models of imaging equipment and in multi-vendor service.'' *Id.* at 39898, and that ''InnoServ is an effective competitor of G.E. in part because InnoServ is one of the very few companies that has developed proprietary diagnostic software for servicing certain models of G.E. imaging equipment.'' (*Id.* at 39898). But this information about so-called

effective competition is contradicted by other information in the CIS:

> [InnoServ] has struggled financially for the past two years * * * losing over $1.5 million for the nine months ending January 31, 1998. In March 1998, InnoServ publicly expressed concern about its ability to continue to meet its working capital requirements.

This fact alone indicates that InnoServ is not providing effective competition to GEMS and that PREVU is not helping it to do so. It makes a significant difference in the antitrust analysis whether InnoServ is an effective or a struggling competitor. if it is effective, why is it losing money? If it is struggling, how will the divestiture of PREVU create an effective competitor when it was not able to make InnoServ an effective competitor? The contradictory statements on this subject in the CIS disable public commentators and the court from making this critical analysis.

The only other information about PREVU in the Competitive Impact Statement is as conclusory as that presented above. ''The divestiture of the PREVU diagnostic package will allow one or more third parties to use the software, which in turn will enable them to service more efficiently certain models of imaging equipment and better compete in the markets for servicing individual pieces of imaging equipment and providing multi-vendor service.'' *Id.* at 39899. There is absolutely no evidence supporting these conclusions. The reader of the CIS does not know whether any entity has ever asked to license or purchase PREVU. Similarly, the reader of the CIS cannot know if or, if so, why, use of PREVU will enable these unnamed ''third parties'' ''* * * to service more efficiently certain models of imaging equipment * * *.'' *Id.*

The CIS goes on to say, in a completely speculative manner, that ''in addition to using the package in its service business, a buyer of PREVU could resell or license PREVU to other parties.'' *Id.* Again, the reader of the CIS does not know the names of any potential ''other parties'' to whom the unnamed ''third parties'' buying PREVU could resell or license PREVU.

The CIS adds. ''The ability to improve upon PREVU * * * would further improve an entity's ability to compete with G.E.'' *Id.* Without having told the reader of the CIS in any detail what PREVU is, it is impossible to know whether it will improve anyone's ability to compete with GEMS or, *a fortiori,* ''further improve'' such ability.

At a minimum, the following information is needed for the public and the Court to evaluate this consent decree:

1. A detailed description of PREVU.
2. Whether anyone has licensed or purchased PREVU from InnoServ;
3. Whether anyone has expressed an interest to license or purchase PREVU from InnoServ;
4. Whether PREVU helps InnoServ and potentially others to compete with GEMS and, if so, how;
5. A comparison between the effectiveness of PREVU and the effectiveness of GEMS' advanced diagnostics;
6. Why it is not anticompetitive for GEMS to retain a non-exlusive non-assignable license to use PREVU (*Id.* at 39895) even though GEMS does not, and is not being required to, license its own advanced diagnostic software to competing service providers.

The CIS itself indicates doubt as to the value of PREVU by providing for the appointment of a trustee to sell PREVU if it is not sold within approximately 180 days. Advanced diagnostics allegedly capable of creating a viable competitor would not be on the market that long.

B. The CIS Does Not Provide Adequate Information About the Markets Involved and the Effect of the Consent Decree on Those Markets

The U.S. Supreme Court has held that anticompetitive restraints have to be considered ''in light of the competitive situation in 'the product market as a whole' '', *Continental T.V., Inc.* v. *GTE Sylvania, Inc.,* 433 U.S. 36, 45 (1977), and that ''an antitrust policy divorced from market considerations would lack any objective benchmarks.'' *Id.* at 53, n. 21. At a minimum, such an analysis requires a definition of the relevant markets; the structure of such markets, including such factors as the number of firms and their respective market shares; and an analysis of the effect of the restraint and of the consent decree on price, output, consumer choice, and product quality.

As detailed below, *none* of this information appears in any useful way in the CIS.

The Government alleges the following markets in its Complaint (Betzner Decl., Exhibit J):

1. The markets for servicing certain models of G.E. imaging equipment on a discrete machine-by-machine basis in numerous local markets throughout the United States; and
2. the markets for multi-vendor service in numerous local markets throughout the United States.

See Complaint at paragraphs 2, 3, 12, 14, 16, 17, 19, and 24. However, nowhere have these markets been defined in the CIS.

Similarly, the complaint is bereft of information about market structure, in particular the number of firms in the alleged markets with their respective market shares. Indeed, *no* competitors in these markets are named except InnoServ and GEMS, and *no* markets shares are given.

Without market definitions and without a description of the structure of the market, it is impossible to describe the anticipated effects on competition of the consent decree as required by APPA § (b)(3). Without such information, the following assertion in the CIS is purely conclusory with no evidence at all backing it up: ''The proposed Final Judgment would promote additional competition in servicing certain models of G.E. imaging equipment and in multi-vendor service by requiring G.E. to divest InnoServ's proprietary diagnostic service software and related materials to an acquirer acceptable to the United States.'' 63 FR at 39898. The combination of the total lack of market information with the total lack of substantive information about PREVU stymies public commenters like ISNI from providing meaningful comment and disables this Court completely from making the public interest determination required by APPA § e.

C. The CIS Does Not Provide Information About Other Companies Interested in Purchasing Innoserv

Given (1) the power, alleged in the Complaint, of GEMS to affect the market, (2) GEMS' size, (3) GEMS' recent transactions increasing that size and power (see Section II above), and (4) the low price of InnoServ ($16 million—see 63 FR at 39898) relative to GEMS' size, it is not surprising that GEMS has made the first offer for InnoServ. What the CIS does not state, however, is (1) what other companies, if any, expressed interest in InnoServ; (2) whether there was, as is likely, some appraisal done by a third party like an investment bank of the worth of InnoServ and/or PREVU, or (3) how long InnoServ was on the market. This information is essential for the court to make its public interest determination because, given the facts listed at the beginning of this paragraph, there may have been a serious suitor of InnoServ that would have had a much less anticompetitive effect than GEMS but that would not complete in a bidding war with GEMS. Indeed, it is difficult to imagine an acquiring company with more of an anti-competitive effect than GEMS.

D. The CIS Does Not Provide Adequate Information on the Related Montana Consent Decree

According to the CIS, ''In conjunction with this settlement, GE has also agreed to consent to all of the relief that the government was seeking in another case, *United States* v. *General Electric Company,* No. CV–96–121–M–CCL (D.Mont. filed Aug. 1, 1996),'' 63 FR at 39899. GEMS states this fact more emphatically in its press release about the Innoserv consent decree:

> *To obtain clearance to complete the Innoserv acquisition,* G.E. Medical Systems agreed to settle a civil lawsuit filed in Montana by the Antitrust Division of the Department of Justice. That lawsuit was filed in 1996 and challenged a G.E. Medical Systems practice under which health-care providers who were also in the business of performing third-party medical equipment service were not eligible to license G.E.'s proprietary advanced service materials, Betzner Decl., Exhibit A, emphasis added.

Even though the Montana consent decree involves GEMS' advanced diagnostics, the CIS gives no supporting evidence or explanation of the following assertions at CIS 39899: ''The United States evaluated the merits of the settlement proposals in each case independently, concluding that the proposed settlement of this case is in the public interest for the reasons stated herein, and that the proposed settlement of the Montana case is in the public interest for reasons stated in the Competitive Impact Statement filed in that case today.''

This dearth of evidence or explanation is problematic for public commenters like ISNI and for the Court because of the following assertion in the Montana CIS, 63 FR 40737, 40738: ''GE has developed advanced service materials [diagnostics like PREVU] that enable service engineers to service certain GE imaging equipment much more quickly than otherwise possible.'' ''Otherwise possible,'' of course, includes servicing with PREVU. Because of that fact the ''essence'' of the Innoserv Final Judgment, i.e., ''to establish a viable competitor'' to GEMS service, 63 FR 39894, does not appear to be possible because, by the U.S. Government's own cryptic evaluation, PREVU is inferior to the advanced service materials of GEMS.

The only way to accomplish this ''essence'' appears to be to require the licensing of GEMS' advanced diagnostics to competitors. Mandatory licensing of the intellectual property of a monopolist was used as a remedy in the *Kodak* case (*Image Technical Services, Inc.* v. *Eastman Kodak Co.,* 125 F.3d 1195, 1226, 1227 (9th Cir. 1997)) after a jury verdict. Such a remedy is *a fortiori,* appropriate here where GEMS seeks to extend its monopoly by a Government-approved and Court-approved acquisition.

The Government appears to have the remedy backwards in this case: it appears that the divestiture of PREVU will accomplish nothing whereas the mandatory licensing of GEMS advanced diagnostics could establish a viable competitor, which is the alleged ''essence'' of this consent decree.

E. The CIS Asserts, Incredibly, That There Were NO Materials Which the United States Considered Determinative in Formulating the Consent Decree

APPA § (b) requires the United States to publish with the CIS ''* * * any other materials and documents which the United States considered determinative in formulating such proposal * * *.'' The CIS at 39900 states, incredibly, that ''there are not determinative materials or documents within the meaning of the APPA that were considered by the plaintiff in formulating the proposed Final Judgment.''

This Court can take judicial notice that antitrust cases are among the most complex, document-intensive cases in the Federal Courts. This Court should respond in the same way as another District Court Judge responded to the same incredible claim: with incredulity and with an order to produce documents required by law. *U.S.* v. *Central Contracting Co., Inc.,* 537 F. Supp. 571, 575, 577 (E.D. Va. 1982):

> The Act [APPA] clearly does not require a full airing of Justice Department files, but the Court cannot countenance plaintiff's claim that though Congress enacted sunshine legislation the courts may blandly (and blindly) accept government certification in case after case that no documents or materials, by themselves or in the aggregate, led to a determination by the government that it should enter into a consent decree.
>
> * * * * *
>
> This does not require full disclosure of Justice Department files * * * or defendant's files, but it does require a good faith review of all pertinent documents and materials and a disclosure of those which meet the above [APPA] criterium.

Although no entity but the Government can know what these documents are, they should include at least the following:

—those documents providing the good-faith basis for the Government to file its complaint;
—third-party analyses or evaluations of Innoserv and/or PREVU;
—documents relating to the efforts of others, if any, to acquire Innoserv;
—documents supporting the conclusory statements in the CIS about how the divestiture of PREVU will increase competition; and,
—documents comparing PREVU and the advanced service materials of GEMS litigated in the Montana case.

These documents or documents like them must exist or else there is no reasoned basis for the consent decree. If they do not exist, then the Antitrust Division is not acting in a professional, competent manner.

V. This Court Should Authorize ISNI To Intervene and Should Appoint a Special Master

APPA § (f) authorizes this Court to ''appoint a special master and such outside consultants or expert witnesses as the court may deem appropriate'' and to ''authorize full or limited participation in proceeding before the court by interested persons or agencies, including * * * intervention as a party pursuant to the Federal Rules of Civil Procedure. * * *'' The defects of the CIS described above amply justify such an appointment and such an authorization.

If the Government had unfettered prosecutorial discretion to settle antitrust cases, the APPA would not exist. Yet the Government is endowing itself with such unfettered discretion by not providing in the CIS information necessary for this Court to make its required public interest determination and for the public to meaningfully comment on the CIS.

Whatever the reason for this non-compliance with the APPA, the Court cannot permit it. Because the Government and GEMS have not complied with the law although they clearly had the knowledge and the resources to do so, it is appropriate for the Court to use the APPA provisions that permit compliance with the APPA to occur.

As mentioned in § II above, the ISNI has the interest, expertise and the experience to aid the Court and to aid a special master appointed by the Court. A special master would be an efficient use of the Court's resources because fact gathering akin to discovery will be involved. The gathering and marshalling of facts will place this matter in the position in which it should have been when the CIS was filed. At that point the Court should be in a position to make its public interest determination or to order further proceedings.

At the very least, the Court should order a hearing before making its public interest determination and should permit the ISNI to participate in that hearing. Otherwise, the Government's

response to this comment will go unanswered, and there is no reason to believe that the quality of that response will be any better than the quality of the CIS.

VI. Conclusion

By keeping the public and the Court ignorant of information required by the APPA, the Government is endowing itself with the unfettered prosecutorial discretion contrary to the very purpose of the APPA. ISNI respectfully requests this Court to uphold both the letter and the spirit of that statute in this important sector of the economy affecting the healthcare costs of literally every American.

Respectfully submitted,

Dated: September 15, 1998.

Ronald S. Katz,

Esq. General Counsel, ISNI, Coudert Brothers, 4 Embarcadero Center. Ste. 3300, San Francisco CA 94111, Telephone 415–986–1300.

Appendix 2

United States of America, Department of Justice, Antitrust Division, 325 7th Street N.W., Suite 300, Washington, D.C. 20530, Plaintiff, v. General Electric Company, 3135 Easton Turnpike, Fairfield, Connecticut 06431, and InnoServ Technologies, Inc., 320 Westway, Suite 530, Arlington, Texas 76018, Defendants. Case Number 1.98CV01744. Judge: Royce C. Lamberth.

Declaration of Claudia Betzner in Support of Public Comment of Independent Service Network International Pursuant to 15 U.S.C. § 16(b), (d)

1. I, Claudia Betzner, am the Executive Director of the Independent Service Network International (‘ISNI’’), a trade association of 157 maintainers of high technology equipment, including medical equipment of the type at issue in this matter. Independent service organizations service equipment manufactured by others.

2. ISNI is a nonprofit corporation incorporated in the District of Columbia. Its members compete with the service divisions of manufacturers like General Electric Medical Systems (‘‘GEMS’’).

3. ISNI has participated in various legal proceedings on behalf of its members, including *Eastman Kodak Co.* versus *Image Technical Services, Inc., et al.,* 504 U.S. 451, 462 and *United States of America* versus *International Business Machines Corporation,* 52 CIV. 72–344 (TPG), Second Circuit, U.S. Court of Appeals (pending).

4. InnoServ is a current member of ISNI but has not been consulted about or advised of this public comment.

5. Serviscope is a member of ISNI but ISNI has been informed by Serviscope that it was acquired by GEMS in late August of 1998.

6. Attached hereto as Exhibit A is a true and correct copy of a press release from GEMS generated by a computer search.

7. Attached hereto as Exhibit B is a true and correct copy of a database listing of all current members of ISNI.

8. Attached hereto as Exhibit C is a true and correct copy of an Order issued by Chief Judge Thomas P. Griesa, Southern District of New York, in the case *United States of America* versus *International Business Machines Corporation, 52 CIV 72–344 (TPG).*

9. I have generated a computerized database search for articles on GEMS’ acquisitions. That search has generated true and correct copies of the articles which appear as Exhibits D through I of this declaration.

17. Attached hereto as Exihibit J is a true and correct copy of the Complaint in this matter.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 12th day of September, 1998, at Atlanta, Georgia.

Claudia Betzner,

Executive Director, ISN International.

Exhibit A

Level 1–1 of 28 Stories

Copyright 1998 PR Newswire Association, Inc., PR Newswire

July 14, 1998, Tuesday.

Section: Financial News
Distribution: To Business Editor
Length: 514 words
Headline: GE Medical System Receives Clearance to Acquire InnoServ Technologies
Dateline: Milwaukee, July 14

Body: GE Medical System announced today that it has received Department of Justice clearance to complete its acquisition of InnoServ Technologies, Inc. (Nasdaq: ISER), a provider of asset management, repair and maintenance programs for imaging, biomedical and laboratory equipment to health-care providers.

‘‘InnoServ is an important addition to GE Medical Systems that will enhance our capability to provide multi-vendor service solutions to help health-care providers become more productive,’’ said Jeffery R. Immelt, GE Medical Systems’ president and CEO.

‘‘InnoServ brings dedicated and talented service personnel to our GE team as well as enhance GE’s circuit board repair and X-Ray tube reloading capabilities—all of which will help us to be a better partner for our multi-vendor service customers,’’ Mr. Immelt said.

To obtain clearance to complete the InnoServ acquisition, GE Medical Systems agreed to settle a civil lawsuit filed in Montana by the Antitrust Division of the Department of Justice. That lawsuit was filed in 1996 and challenged a GE Medical Systems paractice under which health-care providers who were also in the business of performing third-party medical service were not eligible to license GE’s proprietary advanced service materials.

Under the revised policy announced today, health-care providers will be eligible to lincense GE Medical Systems’ advanced service materials for use by their own employees to service their own GE medical imaging equipment, without regard to the scope of their third-party service activities.

Under both the challenged eligibility standards and the revised policy, GE will require that its customers not use GE proprietary information when they provide service to third parties.

The settlement strongly affirms GEMS’ right to control key aspects of its intellectual property licensing: e.g., whether and what to license; which customers would receive licenses; what to charge for a license; and what restrictions to place on the use of licensed materials to protect against misues.

Under the settlement, there are no findings on admissions of any miscoduct by GE and GE is not liable for any damages, financial penalities or other monetary payment.

GE Medicare Systems also agreed to divest InnoServ’ PREVU diaguostic service materals following completion of the InnoServ acquisition.

‘‘The settlement agreement recognizes GE’s fundamental right to protect its intellectual property from misues. The Department of Justice agree with that goal. GE’s goal has always been the same: to allow customers to compete in the service field as they see fit but to ensure that they do not use GE’s proprietary software to do so,’’ Mr. Immelt said.

The InnoServ operations acquired by GE currently employ about 220 people, including more than 120 field engineers.

GE Medical Systems, based in Milwaukee, Wis., is a $4.5 billion global provider of medical diagnostic imaging systems, services and solutions with 16,000 employees worldwide.

Source: GE Medical Systems
Contact: Charles Young, Manager of Global Public Relations of GE Medical Systems, 414–544–3530, pager 888–864–3332, charles.young£med.ge.com
Language: English
Load-Date: July 15, 1998

Exhibit B

Contact Company

AAI Engineering Support, Inc. Hunt Valley, MD
Access Corporation, Cincinnati, OH
Accram, Inc., Phoenix, AZ
Advanced Vio-Med Electronics, Slidell, LA
Advanced Technology Lab., Bothell, WA
Allina Ces, Roseville, MN
AM Services Operation, Santa Ana, CA
AMCOR, Fairfield, NJ
American Teleprocessing Corp., Houston, TX
AMSCO International, Erie, PA
Arand Corporation, Spring City, PA

ASI Copier & Fax Solutions, Dallas, TX
Authorized Technical Services, Oakland, CA
B.C. Tel Sys Support, Burnaby, BC
Baldwin, Cleveland, OH
Bay State Anesthesia Service, North Andover, MA
Beckmen Coulter, Fulton, CA
Bio Medic Inc., Crestwood, IL
Bio-Medical Equipment Service, Lousville, KY
Biomedical Concepts, Inc., Mandeville, LA
Biomedical Eqpt Spec Inc., Sioux City, IA
BioTechnical Services, San Diego, CA
BMC Solutions, Inc., Kennesaw, GA
Brains II, Inc., Markham, ON
C. Hoelzle Associates, Irvine, CA
Centura, Inc., Cleveland, OH
CIC Warrentek, College Station, TX
COHR, Chatsworth, CA
Comdisco Healthcare Group, Inc., Rosemont, IL
Comdoc Inc., Uniontown, OH
Compuquip, Inc., Miami, FL
Computer Maintenance Interntl, Falls Church, VA
Computer Maintenance Corp., College Park, GA
Computer Mtnce of the Triad, Winston Salem, NC
Computer Products & Services, Boca Raton, FL
Copy Systems, Inc., Frederick, MD
CopyTech Business Systems, Inc., Harrison, OH
CPO, Limited, Santa Clara, CA
Crystal Computer, Winchester, MA
CT Solutions, Inc., Fairfield, CA
Ctronics, Stockton, CA
Cyber Resources, Mountainside, NJ
D.F. Blumberg Associates, Inc., Ft. Washington, PA
Data Exchange Corp., Camarillo, CA
Data General Corp., Westboro, MA
Dataprep (Malaysia) SDN.BHD
Deccaid Services, Inc., Deer Park, NY
DecisionOne, Menomonee Falls, WI
DecisionOne Corp Canada, Markham, ON
Dependable X-Ray Inc., Antioch, IL
Diagnostic Parts Exchange, Tallahassee, FL
Digidyne Inc., Lachine, Quebec
Digital Document Solutions, Orange, CT
Digital ES, Inc., Oklahoma City, OK
Docusource, Van Nuys, CA
DXR Imaging, Oakland, CA
EAD Systems Corp., Holbrook, MA
Edwards Business Machines, Inc., Bethlehem, PA
ESSC, Canada, Concord, ON
Express Copy & Tech, Indianapolis, IN
G.E. Walker, Inc., Tampa, FL
Galaxy Computer, St. Paul, MN
Garrett Med-Tech, Inc., Aurora, CO
GEAC Computers, Markham
Genicom Corp., Chantilly, VA
Getronics Service, 1092 AB Amsterdam
Graphic Corporation, Birmingham, AL
Great Eastern Technology, Cambridge, MA
GTE Services, Needham, MA
Hahn & Company, Portland, OR
Halifax Engineering, Inc., Alexandria, VA
HealthTech Pub. Co. Inc., E. Providence, RI
Hospital Shared Services, Denver, CO
BE Digital, Cerritos, CA
IET Intelligent Electronics, Burlington, MA
Imaging Diagnostics, Inc., Goodlettsville, TN
Imtek Office Solution, Inc., Pasadena, MD
Innoserv Technologies, Inc., Arlington, TX
Integration Technologies Gp., Inc., Falls Church, VA
International Bandwidth Services, San Juan Capistrano, CA
J&S Medical Assoc., Natick, MA
Kennsco, Inc., Plymouth, MN
Kinetic Biomedical, Erie, PA
Labcare Services, Sacramento, CA
LFC Capital, Inc., Chicago, IL
Lockhead Martin Comm Sys & Srv., Dearborn, MI
Maintech, Wallington, NJ
Maintenance Alternatives Corp., Petalund, CA
Maintenance Plus Inc., Roselle Park, NJ
Mararthan Services, Inc., Westlake Village, CA
Marcon Services Ltd., Wichita, KS
Matlock Medical Imaging, Inc., Durham, NC
Medelex, Inc., Sunnyvale, CA
Medical Imaging Service, Inc., Jefferson, LA
Medical Imaging Technologies Svcs., Inc., Ettalong Beach NSW
Medical Systems Engineering, San Francisco, CA
MEDTRON Inc., Free Port, NY
MTI Technology, Anaheim, CA
National Customer Engineering, San Diego, CA
National MD, Cleveland, OH
Nationwide Technologies, Inc., Lake Forest, IL
New England Systems, Inc., Middlebury, CT
Nexor System Service OY, Helsinki
North American Imaging, Camarillo, CA
Northrup Grumman GSS, Bohemia, NY
Novare Services, Inc., Cincinatti, OH
OneSource Services, Inc., Cleveland, OH
Picker, Lincolnshire, IL
Precision Medtech Services, Inc., Jessup, MD
Preferred CT Services, Palo Alto, CA
Preferred Diagnostic Equipment, Riverside, CA
Professional Copy Systems, Salt Lake City, UT
Qr Systems, Inc., San Antonio, TX
R.P. Kincheloe Company, Dallas, TX
Radiology Services, Inc., Georgetown, MA
Radiology Services of P.R., Cidra, Puerto Rico
Recognition Service Div., Irving, TX
Red Lion Medical Safety, Newark, DE
Remedpar, Goodlettesville, TN
Reprographic Systems, Inc., Urbandale, IA
Revacomp, Inc., Houston, TX
RPI Inc., Chatsworth, CA
S.O.M.A. Inc., Philadelphia, PA
Safety Anesthesia Eqpt Srvs Inc., Flora Park, NY
Safety Anesthesia Equipment Sv., Floral Park
Scantron FPD, Omaha, NE
Service Results Technology, Markham, ON
Service Technologies Inc., Atlanta, GA
Serviscope Corporation, Wallingford, CT
Shields Business Solutions, Cinnaminson, NJ
SMS System Maintenance Svcs, Inc., Littleton, MA
SoftTech Solutions, Waterford, MI
Southeast Imaging Systems, Inc., Apopka, FL
Sunton Industries, Inc., Hollywood, FL
Technical Duplicator Services, Inc., Anaheim, CA
Technical Dynamics, Annandale, VA
Technical Equipment Services, Inc. San Diago, CA
Tecspec, Inc., San Diego, CA
Telos Corporation, Bountiful, UT
The Exchange Corp., Atlanta, GA
The Thomas Group, Anaheim, CA
Thijssen Field Service B.V., Veenedaal
Toshiba America Medical, Tustin, CA
U.S. Computer Group, Farmingdale, NY
U.S. Medical, Cincinnati, OH
Unisys Canada, ON
Universal Financial, Elmhurst, IL
Vanstar, Atlanta, GA
Vision Medical Services, Ontario, CA
Vitronics, Inc., Eatontown, NJ
World Data Products, Minnetonta, MN
X-Tech Systems, Goleta, CA
Xerographic Copier Services, Inc., San Antonio, TX
Xeographic Corporation, Atlanta, GA

Exhibit C

United States District Court, Southern District of New York

United States of America, *Plaintiff,* against International Business Machines Corporation, *Defendant.* 52 Civ. 72–344 (TPG).

Order

On May 1, 1997 this Court approved an agreement between plaintiff and defendant providing for the termination of the remaining provisions of a 1956

consent decree in stages, with the final provisions ending in the year 2002.

Independent Service Network International (''ISNI'') moves to intervene for purposes of appeal. The motion is granted.

ISNI is an organization of computer repair companies. Part of the business of these companies is to compete with IBM for the repair of IBM computers. At an earlier stage in the litigation, Judge Schwartz of this Court denied ISNI's motion to intervene. *United States* v. *International Business Machines Corp.*, No. 72–344, 1995 WL 366383 (S.D.N.Y. June 19, 1995). Later, when the termination agreement had been arrived at and was before the Court for approval, the undersigned, to whom the case had been reassigned, permitted ISNI to appear as amicus curiae. ISNI thereafter filed papers objecting to the termination agreement, and presented argument at the hearing. The Court's opinion of May 1 dealt in substantial part with ISNI's contentions. Although the Court rejected these contentions, they surely deserved the attention of the Court.

ISNI has a legitimate interest in appealing from the May ruling, and it is in the public interest to allow ISNI to appeal. Under these circumstances the Court has discretion to allow ISNI to intervene under Fed. R. Civ. P. 24(b)(2). *See United States* v. *American Cyanamid Co.*, 556 F. Supp. 357, 361 (S.D.N.Y. 1982), *aff'd*, 719 F.2d 558 (2d Cir. 1983).

Accordingly, the Court directs that ISNI is permitted to intervene. This is solely for the purpose of appealing the May 1 ruling. ISNI will be denominated an ''Objector.'' There is no need to amend the caption of the case.

So Ordered.

Dated: New York, New York, June 26, 1997.

Thomas P. Griesa,

U.S.D.J.

Exhibit D

343rd Story of Level 2 Printed in Full Format

Copyright 1994 Business Wire, Inc., Business Wire

August 2, 1994, Tuesday.

Distribution: Business Editors/Medical Writers
Length: 356 words
Headline: ANMR and GE Medical Systems expand alliance to include very high field Magnetic Resonance Systems
Dateline: Wilmington, Mass.
Body:

August 2, 1994—Advanced NMR Systems Inc. (NASDAQ NM:ANMR) announced Tuesday that it had concluded an agreement that expands its strategic alliance with GE Medical Systems (GEMS).

Under the agreement ANMR will be the system integrator of very high field (3T and 4T) Magnetic Resonance Systems based on the GEMS Signa MR product. In addition to system integration, ANMR will also supply any special order design and manufacturing capability. The agreement covers a 3-year period through June 30, 1997.

Under the agreement, 3T and 4T MR Systems will be made available to research institutions as investigational devices for research purposes. Revenues from this agreement will contribute to satisfying the GEMS obligation under the 1993 contract covering the ANMR InstaScan product (currently marketed by GEMS as SR–100). GEMS exclusivity on the InstaScan product will expire at the end of 1994.

The companies further announced that they were continuing discussions on a series of other collaborations which could result in additional agreements.

''There have been inquiries from research sites requesting that we provide a very high field MR research system based on the Signa product with the option of adding the InstaScan EPI system. This eventuality was anticipated in the original agreement. It is a great example of two organizations, each with added value, working together,'' said Paul J. Mirabella, general manager, Global MR Business for GEMS.

Jack Nelson, chairman and chief executive officer of ANMR, said, ''Our expanded alliance with GEMS allows us to provide the most sophisticated technology to the world's most prestigious research centers. This agreement recognizes our wish to exclusively manufacture higher field systems for GEMS while releasing ANMR to market InstaScan systems and/or retrofits via multiple OEM agreements after December 31, 1994.''

Contact: South Coast Communications, Joseph Allen, 714/252–8440 or Advanced NMR Systems, Shareholders Relations, 201/592–8838.

Language: English.
Load-Date: August 3, 1994.

Exhibit E

320th Story of Level 2 Printed in Full Format

Copyright 1995 Information Access Company, a Thomson Corporation Company, IAC (SM) Newsletter Database (TM), The Business Word, Inc., Hospital Materials Management

June, 1995.

Section: No. 6, Vol. 20; ISSN: 0888–3068
Lenght: 182 words
Headline: Columbia/HCA Signs Five-Year Deal With GE Medical Systems
Body:

Columbia/HCA Healthcare Corp., Nashville, Tenn., signed a five-year agreement with General Electric Medical Systems, Waukesha, Wis., that covers the sales, service and utilization of all diagnostic imaging equipment in the 320-hospital chain. The deal may signal future partnerships between hospitals and equipment companies.

The contract also gives GE responsiblity for providing Columbia/HCA with recommendations on new equipment purchases. Columbia/HCA will provide GE with information on when and why equipment needs to be replaced for every piece of equipment the system owns.

It is extremely difficult to place a dollar value on the contract, and no one can say how it will affect the 200 to 250 independent service vendors that worked on Columbia/HCA's equipment prior to the agreement. Another question, not yet answered, is whether GE and Columbia will take the agreement beyond imaging equipment to other areas in the chain.

If the concept takes hold, the industry will likely see more manufacturers enter not this double role.

Copyright 1995 The Business Word, Inc.

Language: English
IAC–ACC–NO: 2805689 ND
Load-Date: October 25, 1995

Exhibit F

1st Story of Level 1 Printed in Full Format

Copyright 1996 Plain Dealer Publishing Co., The Plain Dealer

February 21, 1996 Wednesday, Final/All.

Section: Business; Pg. 2C
Length: 271 words
Headline: Medical Maintenance Firm Gains Scope With Purchase
Byline: By Marcus Gleisser; Plain Dealer Reporter
Body:

GE Medical Systems of Milwaukee acquired National Medical Diagnostics Inc. of Warrensville Heights yesterday.

With this move, GE grows from specializing in the maintenance of diagnostic equipment to the broader area of handling a wide variety of high-tech medical equipment.

National Medical was owned by group of venture capital investors including KeyCorp., Morgenthaler, Primus, PNC Bank of Pittsburgh, and Canaan Venture Partners of New Canaan, Conn.

It will become a wholly owned subsidiary of GE Medical, retaining its name, location and employee structure, said Ray Dalton, National MD chief executive.

''We expect to grow substantially as a result of this move and will be adding more jobs here,'' Dalton said.

Both parties declined to give the dollar value of the transaction.

National Medical began serving a single hospital in the Denver area four years ago. It took off wildly, said Dalton, until now it provides maintenance and repair services to some 220 hospitals in 23 states.

From a first engineering-service contract worth $250,000 the Cleveland company has grown to more than $22 million in annual revenues and more than 200 employees.

For a fixed price, the company provides maintenance, repair, testing, calibration and other services for a hospital's entire array of medical equipment, including X-ray machines, life-support systems, CT scanners, computers and related telecommunications equipment.

In many cases, the company replaces the need for separate service contracts involving many different outside vendors. The one-stop maintenance often saves hospitals a considerable amount.

Language: English
Load-Date: February 22, 1996

Exhibit G

227th Story of Level 2 Printed in Full Format

Copyright 1996 Medical Data International, Inc., Medical Industry Today

August 27, 1996, Tuesday.

Section: Mergers & Acquisitions
Length: 303 words
Headline: GE Medical Systems Acquires Assets of Two Companies
Body:

GE MEDICAL SYSTEMS (Milwaukee, WI), a business of General Electric Company, has agreed to acquire the U.S. healthcare assets of Specialty Underwriters (SU) and Maintenance Management (MMC), GE Medical Systems announced in a release Monday.

Terms of the agreement were not disclosed.

Specialty Underwriters, a private firm based in Oak Creek, WI, was founded in 1982. It sells equipment maintenance insurance to healthcare and other industries. Maintenance Management provides on-site maintenance services for hospitals' and clinics' medical and office equipment.

''The acquisition of Specialty Underwriters' healthcare operations will help bolster GE Medical Systems' efforts in the multivendor service business. Our multivendor service offerings provide healthcare providers with a more efficient solution for managing and servicing hundreds and often thousands of pieces of clinical and biomedical equipment across their departments,'' said Tom Dunham, vice president and general manager of GE Medical Systems-Americas Service. ''As a one-stop-shop alternative, we reduce customers' overall maintenance costs while ensuring consistent, high quality.''

Said Michael H. Polaski, founder and president of Specialty Underwriters and Maintenance Management, ''The healthcare portion of our business has been very successful and should thrive as part of GE Medical Systems, whose entire focus is healthcare solutions. After the sale, we will continue to apply the successful formula we developed with SU and MMC to maintenance activities in other industries. Capital from this transaction will enable us to accelerate our plans to develop new products and enter new markets.''

GE Medical Systems is a leading provider of diagnostic imaging systems and related services.

Contact: Laurie Bernardy (414/544–3530)
Language: English
Load-Date: September 02, 1997

Exhibit H

1st Story of Level 1 Printed in Full Format

Copyright 1997 Business Wire, Inc., Business Wire

August 19, 1997, Tuesday.

Distribution: Health/Medical Writers or Business Editors
Length: 356 words
Headline: GE Medical Systems Invests $5.1 Million for Acquisition of Securities of Advanced NMR Systems, Inc. and Advanced NMR Systems, Inc.'s 3T and 4T Whole Body Imaging Business
Dateline: Wilmington, Mass.
Body:

19, 1997—Advanced NMR Systems Inc. (NASDAQ:ANMR) and GE Medical Systems jointly announced today that GE has invested $5.1 million of the acquisition of $2.7 million of ANMR preferred stock, convertible at $0.233 per share, and for the acquisition of ANMR's 3-tesla and 4-tesla whole body magnetic resonance imaging business. The companies had previously collaborated in the development of these systems. GE Medical Systems will continue to develop, manufacture, sell and service the 3T and 4T whole body imaging systems, and will also acquire ANMR's business of servicing 1.5T systems.

In announcing the transaction, Jeffrey R. Immelt, president and chief executive officer of GE Medical Systems, said, ''GE Medical Systems is excited about assuming sole responsibility for this 3T and 4T whole body imaging business, and we are committed to providing products and service to the developing market in 3T and 4T whole body imaging systems. We are also pleased with the opportunity to build upon our strategic relationship by becoming an ANMR shareholder.''

Jack Nelson, chairman and chief executive officer of Advanced NMR Systems Inc. said, ''This transaction further strengthens our balance sheet and positions us to concentrate on our future growth following our proposed merger with Advanced Mammography Systems. We are delighted to have GE as a significant investor in the company.''

Advanced NMR Systems Inc. and Advanced Mammography Systems Inc. (NASDAQ:MAMO) have executed a definitive agreement to merge. Advanced NMR Systems Inc. is awaiting SEC clearance of proxy material and a related registration statement for subsequent approval of shareholders for the merger.

Contact: Advanced NMR Systems Inc., Beverly Tkaczenko, 800/476–0569 or GE Medical Systems, Charles Young, 414/544–3530.

Language: English
Load-Date: August 20, 1997

Exhibit I

82nd Story of Level 2 Printed in Full Format

Copyright 1997 Business Wire, Inc., Business Wire

December 1, 1997, Monday.

Distribution: Business Editors, Health/Medical Writers
Length: 549 words
Headline: GE Medical Systems and INPHACT Form Strategic Alliance; Five-Year Joint Marketing Pact Could Generate $100 Million In Revenues
Dateline: Nashville, Tenn.
Body:

Dec. 1, 1997—General Electric Medical Systems, the world's leading manufacturer of diagnostic imaging equipment, and INPHACT, a Nashville-based provider of on-line radiology services for radiologists and health care facilities, have forged a give-year ''Strategic Alliance,'' The national agreement designates GE as an INPHACT preferred vendor and establishes joint marketing efforts that could generate more than $100 million in GE equipment and INPHACT service revenues during the contract period. INPHACT, which currently serves radiologists and health care facilities in seven states, will receive preferred purchase and service options on GE equipment for new client installations or upgrades for its existing clients. GE will help to jointly market INPHACT's 24/7 on-call image interpretation service, digital image transmission & archiving and physicians' practice management services to its current and new physician and facility clients, and INPHACT will help to jointly market GE's Integrated Imaging Services (''IIS'') for networking (PACS) products and services. ''INPHACT has developed leading-edge services that can help radiologists and health care facilities deliver radiology services more efficiently and cost effectively,'' said Tony Lombardo, General Manager of Sales for GE IIS. ''INPHACT has made our integrated imaging solutions (IIS) products and services an important element in its service platform, which results in reduction of duplicate studies, elimination of lost files, decreased maintenance costs and faster diagnoses for its clients,'' ''GE has already played an integral part in helping INPHACT develop our state-of-the-art on-line radiology services,'' said Jeffrey A. Landman, M.D., chairman and chief executive officer of INPHACT. ''GE's ongoing commitment to INPHACT and our clients assures that we will continue to be at the forefront of helping radiologists and health care facilities provide more in-depth service while reducing their costs.'' Founded in 1996, INPHACT (www.inphact.com) is a privately-held provider of on-line radiology and practice management services that currently serves radiologists and health care facilities in seven states. Earlier this year, the company introduced the Virtual Partner program, which offers a unique blend of 24/7 on-call image interpretation, practice management and equity partnership to radiologists. INPHACT also offers health care facilities 24-hour consulting, system design, digital image transmission and archival services. GE Medical Systems (GEMS), a business of General Electric Company, develops and produces diagnostic imaging equipment in several modalities, including X-ray, Mammography, Magnetic Resonance, Computed Tomography, Ultrasound, Nuclear Medicine Imaging and PET. GEMS also provides a variety of services—from networking to biomedical equipment maintenance. GE Medical Systems has annual sales of approximately $4 billion and employs more than 15,000 people worldwide.

Contact: Katcher Vaughn & Bailey Communications, Roy Vaughn, Lisa Achilles, 615/248–8202.

Today's News On The Net—Business Wire's full file on the Internet, with Hyperlinks to your home page.

URL: http://www.businesswire.com

Language: English
Load-Date: December 2, 1997

Exhibit J

United States District Court for the District of Columbia

United States of America, Department of Justice, Antitrust Division, 325 7th Street, N.W., Suite 300, Washington, D.C. 20530, *Plaintiff*, v. General Electric Company, 3135 Easton Turnpike, Fairfield, Connecticut 06431, and InnoServ Technologies, Inc., 320 Westway, Suite 530, Arlington, Texas 76018, *Defendants*. Case Number 1:98CV01744. Judge: Royce C. Lamberth. Deck Type: Antitrust. Date Stamp: 07/14/98.

Complaint

The United States of America, acting under direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against defendants and alleges as follows:

1. The United States brings this antitrust case to block the proposed acquisition of InnoServ Technologies, Inc. (''InnoServ'') by General Electric Company (''GE''). GE is the largest manufacturer of medical imaging equipment, such as CT scanners and magnetic resonance imagers (MRIs), and is the leading service provider of GE imaging equipment. InnoServ is one of the nation's largest independent service organizations (''ISOs'') and has significant expertise and capabilities and competes with GE in servicing certain GE imaging equipment. GE and InnoServ also compete in numerous local markets for comprehensive multi-vendor and asset-management services (''multi-vendor service''), in which they contract to provide services relating to some or all of a hospital's capital equipment—including imaging and non-imaging medical equipment—regardless of manufacturer. The competition between GE and InnoServ in these markets has reduced prices significantly for imaging equipment service.

2. To help service its imaging equipment, GE has developed advanced diagnostic software that it uses to calibrate, maintain, and service more quickly a particular model of imaging equipment. InnoServ is one of very few companies that has developed its own proprietary diagnostic software (called ''PREVU'') for servicing certain GE imaging equipment. Although it is not as sophisticated or efficient as GE's own software, PREVU has made InnoServ an effective competitor to GE in the markets for servicing certain models of GE imaging equipment on a discrete, machine-by-machine basis, as well as in markets for providing multi-vendor service to hospitals that own GE equipment.

3. If GE acquires InnoServ, GE will increase its already high share in the markets for servicing certain models of GE imaging equipment on a discrete basis, particularly several models of CT scanners and MRIs, and it will eliminate an effective competitor in these markets. It will also substantially reduce competition in multi-vendor service markets. Unless blocked, this acquisition likely will result in higher prices for imaging equipment maintenance and service.

I. Jurisdiction and Venue

4. The United States files this action under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain the defendants from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

5. Both GE and InnoServ service medical imaging equipment in interstate commerce, and the operations of their medical equipment service businesses affect and are in the flow of interstate commerce. This Court has subject matter jurisdiction over the action and the parties pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. §§ 1331 and 1337.

6. The defendants transact business and are found within the District of Columbia. Venue is proper in this District under 15 U.S.C. § 22 and 28 U.S.C. § 1391(c).

II. The Defendants

7. GE is a New York corporation headquartered in Fairfield, Connecticut. GE is a diversified technology, manufacturing, and services company. In 1997, GE's total revenues exceeded $90 billion. Its wholly owned subsidiary, General Electric Medical Systems (''GEMS''), located in Waukesha, Wisconsin, manufactures medical imaging equipment such as CT scanners, MRIs, x-ray equipment, and nuclear-medicine cameras. GEMS is the leading service provider of imaging equipment manufactured by GE. Since 1994, GEMS has also serviced imaging equipment manufactured by other companies through GE HealthCare Services, its multi-vendor service group.

8. InnoServ is a California corporation headquartered in Arlington, Texas. InnoServ provides various forms of multi-vendor service to radiology, cardiology, biomedical, and laboratory departments of hospitals and other healthcare providers. In fiscal year 1997, InnoServ's total service revenues exceeded $37 million.

III. Trade and Commerce

A. Relevant Product Markets

1. Service of GE Imaging Equipment on a Discrete Basis

9. Hospitals, physicians, and other health care providers use various types (sometimes referred to as ''modalities'') of medical imaging equipment, such as CT scanners, MRIs, and nuclear cameras, to create images of the body's internal structure. Each modality of imaging equipment employs different technologies and generally is not interchangeable with any other. For example, an MRI is better suited than a CT scanner for imaging soft tissue, and a CT scanner can disclose a tumor that less sophisticated x-ray equipment cannot detect.

10. GE is the largest manufacturer of imaging equipment and sells various modalities of such equipment throughout the United States. For each modality, GE often has sold multiple models, particularly as it improves upon the equipment. Since 1987, GE has sold at least the following CT scanner models: the CT Max; the 9800/Quick; the 9800 Hilight Advantage; and the Hispeed Advantage.

11. Imaging equipment requires regular service, including preventive maintenance, general repairs, and emergency service. Health care providers spend over $3 billion each year to service and repair imaging equipment.

12. The sale of service for each model of imaging equipment is a separate product market. A hospital or clinic that owns a GE 9800/Quick CT scanner requiring service does not have any reasonable substitute to purchasing service for that equipment. Purchasing service for another piece of imaging equipment—for example, an ultrasound machine, which is used for very different kinds of medical diagnoses—is not a alternative. If faced with a small but significant increase in the price of servicing the GE 9800/Quick, most hospitals would not forego purchasing service for that model. The same is true for other models of GE imaging equipment.

13. Historically, after the warranty on a piece of GE imaging equipment has expired, hospitals and other owners of the equipment have entered into discrete contracts with a service provider for that equipment. GE and InnoServ compete to sigh such discrete service contracts for several different models of GE imaging equipment. If faced with a small but significant increase in the price of servicing a GE 9800/Quick CT scanner, most hospitals

preferring discrete service contracts would not switch to a multi-vendor service contract covering all of their imaging equipment. The same is true for other models of GE imaging equipment.

14. The service for certain models of GE imaging equipment on a discrete, machine-by-machine basis is a line of commerce and a relevant product market within the meaning of the Clayton Act.

2. Multi-vendor Service

15. In recent years, rather than have numerous discrete service contracts with several different equipment manufacturers or ISOs, some hospitals have chosen to contract with a single provider to service most or all of the hospital's equipment. Such multi-vendor service contracts may include service for all of a hospital's imaging equipment—regardless of manufacturer, modality, or model. They may also include service for all of the hospital's non-imaging medical equipment, such as biomedical and laboratory equipment. In some cases, hospitals also contract with a single entity for all of the hospital's capital equipment needs, including advice on capital equipment replacement decisions (''asset management''). Corporations owning a large number of individual hospitals, in particular, find this ''one-stop shopping'' approach an efficient method of purchasing service for their imaging (and often non-imaging) equipment. Both GE and InnoServ compete with one another and with other service providers to obtain such multi-vendor and asset management (defined herein as ''multi-vendor service'') contracts. Hospitals preferring to purchase multi-vendor service do not have reasonable alternatives to such contracts. If faced with a small but significant increase in the price of multi-vendor service, most of those hospitals would not switch to purchasing service on a discrete basis.

16. Multi-vendor service is a line of commerce and a relevant product market within the meaning of the Clayton Act.

B. Relevant Geographic Markets

17. The geographic markets for imaging equipment service are local, with the precise contours of those markets differing depending on the type of equipment involved and other factors. Hospitals strongly prefer to contract with nearby service providers, where such providers are qualified and able to service the equipment involved. In general, service providers located closer to the hospital customer can respond to service emergencies more quickly, thereby minimizing the amount of time during which the hospital's imaging equipment is not working. A hospital can lose substantial revenue if its imaging equipment is broken; in some cases, patients may need to be transferred to other health care facilities due to equipment failure. Therefore, given the importance of timely service, service providers located relatively far away from a hospital are at a substantial disadvantage in competing to service that hospital. If faced with a small but significant increase in the price of service from its local service provider, most hospitals would not switch to using a service provider located relatively far away.

18. GE offers both service contracts for discrete pieces of GE imaging equipment and multi-vendor service contracts throughout the United States. InnoServ offers similar services within a radius of about 100 miles of several large metropolitan areas.

19. Each local area in which GE and InnoServ are both sufficiently close to a hospital customer to provide timely imaging equipment service is a section of the country and a relevant geographic market within the meaning of the Clayton Act.

C. Anticompetitive Effect and Entry

20. GE and InnoServ compete in numerous local markets for servicing certain models of GE imaging equipment on a discrete basis and for multi-vendor service. In many of these markets, InnoServ is one of the few ISOs that has specialized in servicing GE imaging equipment. Moreover, GE and Innoserv were among the first service providers to offer comprehensive multi-vendor service; each signed a contract to provide such service to a large customer in 1995. Particularly because InnoServ is one of very few companies that has developed its own proprietary diagnostic software for GE imaging equipment, consumers in both discrete service markets and multi-vendor service markets view InnoServ service as a good substitute for GE service. The competition between GE and InnoServ in these markets has resulted in significant price reductions for consumers. GE's acquisition of InnoServ would eliminate this competition and increase GE's already high share in the markets for servicing certain models of GE imaging equipment, particularly several models of CT scanners and MRIs. It would also substantially reduce competition in multi-vendor service markets.

21. Successful entry into the relevant markets is difficult, time consuming, and costly. In general, customers prefer to purchase service from existing, reputable firms in the industry. Therefore, new entrants often find it difficult to enter on a scale necessary to succeed financially.

IV. Violation Alleged

22. On May 19, 1998, GE and InnoServ signed an Agreement and Plan of Merger under which GE intends to acquire the common stock of InnoServ for a purchase price of $16 million.

23. GE's proposed acquisition of InnoServ is likely to lessen competition substantially and tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

24. The transaction likely will have the following effects, among others:

a. Actual and future competition between GE and InnoServ will be eliminated in the markets for servicing certain models of GE imaging equipment on a discrete, machine-by-machine basis in numerous local markets throughout the United States;

b. Competition generally in the markets for servicing certain models of GE imaging equipment on a discrete, machine-by-machine basis in numerous local markets throughout the United States will be lessened substantially;

c. Actual and future competition between GE and InnoServ will be eliminated in the markets for multi-vendor service in numerous local markets throughout the United States; and

d. Competition generally in the markets for multi-vendor service in numerous local markets throughout the United States will be lessened substantially.

V. Requested Relief

The United States requests:

1. That the proposed acquisition by GE of InnoServ be adjudged to violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18;

2. That GE and InnoServ be permanently enjoined from carrying out GE's intended acquisition of the common stock of InnoServ as expressed in the Agreement and Plan of Merger dated May 19, 1998, and from carrying out any agreement, understanding, or plan, the effect of which would be to combine the businesses or assets of GE and InnoServ;

3. That the United States be awarded its costs of this action; and

4. That the United States have such other relief as the Court may deem just and proper.

Dated: July 14, 1998.

Joel I. Klein,

Assistant Attorney General.

John M. Nannes,

Deputy Assistant Attorney General.

Constance K. Robinson,

Director of Operations and Merger Enforcement.

Respectfully submitted,

Jon B. Jacobs (D.C. Bar #412249), Fred E. Haynes (D.C. Bar #165654), Joan H. Hogan (D.C. Bar #451240), Peter J. Mucchetti,

Attorneys, Antitrust Division, 325 7th Street, N.W., Suite 300, Washington, D.C. 20530, (202) 514–5012.

M.J. Moltenbrey,

Chief, Civil Task Force.

Susan L. Edelheit,

Assistant Chief, Civil Task Force.

Appendix 3

United States District Court for the District of Columbia

United States of America, Department of Justice, Antitrust Division, 325 7th Street, N.W., Suite 300, Washington, D.C. 20530, *Plaintiff,* v. General Electric Company, 3135 Easton Turnpike, Fairfield, Connecticut 06431, and InnoServ Technologies, Inc., 320 Westway, Suite 530, Arlington, Texas 76018, *Defendants.* Case Number 1:98CV01744. Judge: Royce C. Lamberth.

Supplemental Public Comment of Independent Service Network International Pursuant to 15 U.S.C. § 16(b),(d)

Because of an event that occurred after Independent Service Network International (''ISNI'') submitted its public comment yesterday. ISNI submits this short supplemental comment pursuant to the Antitrust Procedures and Penalty Act (''APPA''), 15 U.S.C. § 16(b), (d). The new event, which occurred today, is GE Medical Systems' (''GEMS'') issuance of the attached news release stating that ''* * * it has completed its acquisition of InnoServ Technologies, Inc * * *.''

This press release completely undermines and disrespects the processes of the APPA for several reasons. First, it makes a sham of the public comment period if the very act that the Government's complaint challenged occurs during that period.

Second, one of the purposes of the public comment period is to provide the United States with more information. Based on this information, the United States has the right to withdraw its consent from the decree, 63 FR 39894. The fact that the defendants have presented the United States with a *fait accompli* has the obvious purpose of making the withdrawal of consent more difficult.

Finally, this Court, not the parties, has the final authority to approve the proposed consent decree. For GEMS to say that it has ''completed'' its acquisition of InnoServ Technologies ignores that salient fact.

Dated: September 16, 1998.

Respectfully submitted,

Ronald S. Katz, Esq.,

General Counsel, ISNI, Coudert Brothers, 4 Embarcadero Center, Ste. 3300, San Francisco, CA 94111, Telephone: 415–986–1300.

Appendix 4

Star Technologies

Via Facsimile and First Class Mail
(202) 307–9952

September 16, 1998.

Ms. Mary Jean Moltenbrey,
Chief, Civil Task Force, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 300, Washington, DC 20530

Dear Ms. Moltenbrey: This letter is in response to the request for public comments on the proposed settlement of the government's action blocking the acquisition of InnoServ Technologies, Inc. by General Electric Co. In accordance with the proposed settlement, GE is required to sell InnoServ's PREVU software to a third party approved by the Justice Department. The software's buyer could then use PREVU in its service business, or resell or license PREVU to other parties. Because Star Technologies believes that PREVU either contains software developed by it or that portions of PREVU were derived from such software, approval of the sale of PREVU must address the assignment of transfer of Star's underlying software.

By way of background, Star Technologies was founded in 1981 as a manufacturer of array processors, which are devices used in conjunction with general-purpose computers to accelerate the processing of large amounts of numerical data. While the earliest applications for Star's array processors were in oil exploration, other applications included molecular modeling, and signal and imaging processing. Beginning in 1984, Star began selling its array processors to General Electric Medical Systems for use in GE's CT scanners. Independently from its business relationship with GE, which constituted a substantial amount of Star's business for several years, Star developed various versions of diagnostic software for testing its array processors. The version of software of concern now is known as ''Star Maintenance Software'' or ''SMS.'' Although developed primarily for internal use, Star has licensed SMS to numerous customers solely for their own internal use.

Among the customers to whom Star licensed SMS were several firms that perform third-party maintenance on GE's CT scanners. They use SMS to diagnose only the array processor elements designed and manufactured by Star that are a component of the GE CT scanners. While InnoServ is currently a customer of Star's for the repair of circuit boards used in Star's array processors. InnoServ has not licensed SMS from Star.

In recent discussions with Mr. Philip Cannon, Star's Vice President of Technology, Ms. Cathy Donovan, InnoServ's Manager of Technical Support, acknowledged that PREVU uses Star's diagnostic software, and also expressed her belief that such use was appropriately licensed by Star. Assuming that SMS was validly licensed from Star, any acquirer of PREVU would still need Star's consent to transfer or assign that license since SMS is an integral part of PREVU. Absent a valid existing license, the acquirer of PREVU must obtain a new license from Star for the SMS portion of the PREVU system.

With respect to the licensing of SMS, Star is willing to support the appointed trustee in establishing with a prospective acquirer of PREVU an appropriate license for the use of Star's diagnostic software. In any event, Star wishes to be apprised of attempts to sell the PREVU software so that it can ensure that its intellectual property is protected from misuse. If you have any questions or desire additional information in this regard, please contact the undersigned at (301) 315–0240.

Sincerely,

Star Technologies, Inc.

R.W. Tschippert,

Director of Contracts.

Certificate of Service

This certifies that on November 17, 1998, I caused copies of the foregoing Response to Public Comments to be served as indicated upon the parties to this action and courtesy copies to be served as indicated upon each commenter:

By Hand

Richard L. Rosen, Esquire,

Arnold & Porter, 555 12th Street, Washington, D.C. 2004, Counsel for General Electric Company.

Malcolm R. Pfunder, Esquire,

Gibson, Dunn & Crutcher, LLP, 1050 Connecticut Ave., N.W., Washington, D.C. 20036, Counsel for Innoserv Technologies, Inc.

By Facsimile (Without Appendices) and First-Class Mail

Robert Compton,

Star Technologies, 1151 Seven Locks Road, Building A, Potomac, MD 20854, (301) 315–0260 (facsimile).

Ronald S. Katz, Esquire,

Coudert Brothers, 4 Embarcadero Center, Suite 3300, San Francisco, CA 94111, Counsel for Independent Service Network International, (415) 986-0320 (facsimile).

Jon B. Jacobs

[FR Doc. 98–32147 Filed 12–8–98; 8:45 am]

BILLING CODE 4410–11–M

NORTHEAST DAIRY COMPACT COMMISSION

Notice of Meeting

AGENCY: Northeast Dairy Compact Commission.

ACTION: Notice of meeting.

SUMMARY: The Compact Commission will hold its monthly meeting to consider matters relating to administration and the price regulation and will hold election of its officers for the forthcoming year as provided under Article IV of the Commission's Bylaws.

DATES: The meeting is scheduled for Wednesday, December 16, 1998 to commence at the close of the Proposed Rulemaking Public Hearing beginning at 9:00 a.m. as previously noticed at 63 FR 65563, 65565 (November 27, 1998).

ADDRESSES: The meeting will be held at the Tuck Library Building, Chubb Auditorium, 30 Park Street, Concord, NH (exit 14 off I–93).

FOR FURTHER INFORMATION CONTACT: Kenneth Becker, Executive Director, Northeast Dairy Compact Commission, 43 State Street, PO Box 1058, Montpelier, VT 05601. Telephone (802) 229–1941.

(Authority: (a) Article V, Section 11 of the Northeast Interstate Dairy Compact, and 7 U.S.C. 7256.)

Kenneth Becker,

Executive Director.

[FR Doc. 98–32618 Filed 12–8–98; 8:45 am]

BILLING CODE 1650–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 30–16055–ML; ASLBP No. 99–756–01–ML]

Advanced Medical Systems, Inc.; Notice of Reconstitution

Pursuant to the authority contained in 10 CFR 2.721 and 2.1207, the Presiding Officer in the captioned Subpart L proceeding is hereby replaced by appointing Administrative Judge Charles Bechhoefer as Presiding Officer in place of Administrative Judge B. Paul Cotter, Jr.

All correspondence, documents and other material shall be filed with the Presiding Officer in accordance with 10 CFR 2.1203 (1997). The address of the new Presiding Officer is: Administrative Judge Charles Bechhoefer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Issued at Rockville, Maryland, this 3rd day of December 1998.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 98–32628 Filed 12–8–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 30–16055–ML–REN; ASLBP No. 95–707–02–ML–REN]

Advanced Medical Systems, Inc.; Notice of Reconstitution

Pursuant to the authority contained in 10 CFR 2.721 and 2.1207, the Presiding Officer in the captioned Subpart L proceeding is hereby replaced by appointing Administrative Judge Charles Bechhoefer as Presiding Officer in place of Administrative Judge B. Paul Cotter, Jr.

All correspondence, documents and other material shall be filed with the Presiding Officer in accordance with 10 CFR 2.1203 (1997). The address of the new Presiding Officer is: Administrative Judge Charles Bechhoefer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Issued at Rockville, Maryland, this 3rd day of December 1998.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 98–32629 Filed 12–8–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440]

The Cleveland Electric Illuminating Company, Toledo Edison Company, Centerior Service Company, Ohio Edison Company, OES Nuclear, Inc., Pennsylvania Power Company, and Duquesne Light Company (Perry Nuclear Power Plant, Unit No. 1); Order Approving Application Regarding the Transfer of Operating Authority

I.

The Cleveland Electric Illuminating Company (CEI), Centerior Service Company (CSC), Duquesne Light Company, Ohio Edison Company (OE), OES Nuclear, Inc., Pennsylvania Power Company (Penn Power), and Toledo Edison Company (TE) are the licensees of the Perry Nuclear Power Plant, Unit No. 1 (PNPP). CEI and CSC act as agents for the other licensees and have exclusive responsibility for, and control over, the physical construction, operation, and maintenance of PNPP as reflected in Operating License No. NPF–58. The U.S. Nuclear Regulatory Commission (NRC) issued License No. NPF–58 on March 18, 1986, pursuant to Part 50 of Title 10 of the Code of Federal Regulations (10 CFR Part 50). The facility is located on the shore of Lake Erie in Lake County, Ohio, approximately 35 miles northeast of Cleveland, Ohio.

II.

By application dated June 30, 1998, as supplemented by submittals dated October 27 and November 30, 1998, the licensees requested approval of the transfer of operating authority under the license to a new company, FirstEnergy Nuclear Operating Company (FENOC), and issuance of a conforming amendment. The licensees proposed to transfer operating authority under the license to FENOC to allow it to use and operate PNPP and to possess and use related licensed nuclear materials in accordance with the same conditions and authorizations in the current operating license. The licensees have also requested the issuance of a license amendment reflecting the transfer of operating authority. FENOC, a wholly-owned subsidiary of FirstEnergy Corporation, the direct or indirect parent of the owners of PNPP except for Duquesne Light Company, would become the licensed operator for PNPP and would have exclusive control over the operation and maintenance of the facility. The present plant organization, the oversight organizations, and the engineering and support organizations would be transferred essentially intact from the current operating licensees to FENOC. The technical qualifications of the FENOC organization, therefore, would be at least equivalent to those of the existing organization responsible for operating the plant. CSC, which has no ownership interest in PNPP, and is licensed only as an operator of PNPP, would be removed from the license.

Under the proposed arrangement, ownership of PNPP would remain unchanged; each owner would retain its current ownership interest. FENOC would not own any portion of PNPP. Likewise, the owners' entitlement to capacity and energy from PNPP would not be affected by the proposed transfer of operating responsibility for PNPP to FENOC. The owners would continue to provide all funds for FENOC to operate, maintain, and decommission PNPP. The owners' responsibilities would include providing funding for any emergency situations that might arise at PNPP.

The licensees requested the Commission's approval of the transfer of operating authority to FENOC and issuance of a conforming license amendment pursuant to 10 CFR 50.80 and 50.90. Notice of this application for approval and an opportunity for a hearing were published in the **Federal Register** on August 4, 1998 (63 FR 41600), and an Environmental Assessment and Finding of No Significant Impact was published in the **Federal Register** on September 10, 1998 (63 FR 48531).

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information contained in the submittals of June 30, October 27, and November 30, 1998, and other information before the Commission, the NRC staff has determined that FENOC is qualified to hold the license to the extent and for the purposes described above, and that the transfer of the license as described above is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. These findings are supported by a Safety Evaluation dated December 2, 1998.

III.

Accordingly, pursuant to Sections 105, 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended; 42 USC §§ 2135, 2201(b), 2201(i), and 2234; and 10 CFR 50.80, *it is hereby ordered* that the Commission consents to the transfer of the license as described herein to FENOC, subject to the following conditions:

(1) FENOC shall not market or broker power or energy from the Perry Nuclear Power Plant, Unit No. 1. The owners are responsible and accountable for the actions of FENOC to the extent that said actions affect the marketing or brokering of power or energy from the Perry Nuclear Power Plant, Unit No. 1, and, in any way, contravene the antitrust license conditions contained in the license.

(2) Should the formation of FENOC and transfer of operating authority not be completed by December 31, 1999, this Order shall become null and void, provided, however, on application and for good cause shown, such date may be extended.

This Order is effective upon issuance.

Action on the proposed conforming license amendment will be taken upon implementation of the transfer approved by this Order.

For further details with respect to this Order, see the licensees' application dated June 30, 1998, as supplemented by submittals dated October 27 and November 30, 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 the Perry Public Library, 3753 Main Street, Perry, OH 44081.

Dated at Rockville, Maryland, this 2nd day of December.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–32630 Filed 12–8–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–003]

Consolidated Edison Company; Indian Point Nuclear Generating Station, Unit 1; Notice of Public Meeting

The NRC will conduct a public meeting at the New York State Armory, 955 Washington Street, Peekskill, New York 10566–5815, on January 20, 1999, to discuss plans developed by Consolidated Edison Company (Con Edison) to decommission the Indian Point Nuclear Generating Station Unit 1. The Indian Point Station, located in Buchanan, New York, includes the permanently shutdown Unit 1 and two operating units. Unit 2 is operated by Consolidated Edison Company, and Unit 3 by New York Power Authority. The meeting is scheduled for 7:00—9:30 p.m., and will be chaired by Mr. Francis X. Cameron, Deputy Assistant General Counsel and Special Counsel for Public Liaison, NRC. The public meeting is being held pursuant to the NRC's regulations in Title 10 of the Code of Federal Regulations, Section 50.82(a)(4) regarding the requirements of a public meeting on the licensees plans for decommissioning the facility as described in the post-shutdown decommissioning activities report (PSDAR). Con Edison submitted a decommissioning plan, which was approved by the NRC in January 1996, prior to the rule change promulgated at 61 FR 39301 (July 29, 1996), requiring a PSDAR. Decommissioning plans approved prior to the revision are considered to meet the requirement for a PSDAR and are subject to the revised regulations, including the requirement for a public meeting. The meeting will include a presentation by the NRC staff on the decommissioning process and NRC programs for regulatory oversight of decommissioning activities. There will also be a presentation by Consolidated Edison Company on planned decommissioning activities. There will be an opportunity for members of the public to ask questions of NRC staff and Con Edison representatives and make comments related to decommissioning of Indian Point Unit 1. The meeting will be transcribed.

Con Edison's decommissioning plan provides a short discussion of the plant history, a description of the unit's radiological conditions, and a description and schedule of planned decommissioning activities. This decommissioning plan and the NRC's safety evaluation associated with the plan is available for public inspection at the White Plains Public Library, 100 Martine Avenue, White Plains, NY 10601. For more information contact John L. Minns, Non-Power Reactors and Decommissioning Project Directorate, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–3166.

Dated at Rockville, Maryland, this 3rd day of December 1998.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate Division of Reactor Program Management, Office of Nuclear Regulatory Regulation.

[FR Doc. 98–32634 Filed 12–8–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–498 and 50–499]

STP Nuclear Operating Company; Notice of Withdrawal of Application for Amendment To Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of STP Nuclear Operating Company (the licensee) to withdraw its January 28, 1997, application for proposed amendment to Facility Operating Licenses Nos. NPF–76 and NPF–80 for the South Texas Project, Unit Nos. 1 and 2, located in Matagorda County, Texas.

The proposed amendment would have relocated the details of Technical Specification (TS) 6.2.3 on the Independent Safety Engineering Group from the Administrative Controls

section of the TSs and placed these details in the Updated Final Safety Analysis Report.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on March 12, 1997 (62 FR 11495). However, by letter dated September 30, 1998, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated January 28, 1997, and the licensee's letter dated September 30, 1998, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488.

Dated at Rockville, Maryland, this 3rd day of December 1998.

For the Nuclear Regulatory Commission.

Thomas W. Alexion,

Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–32631 Filed 12–8–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 70–7002]

Notice of Amendment to Certificate of Compliance GDP–1 for the U.S. Enrichment Corporation (Portsmouth Gaseous Diffusion Plant) Piketon, Ohio

The Director, Office of Nuclear Material Safety and Safeguards, has made a determination that the following amendment request is not significant in accordance with 10 CFR 76.45. In making that determination, the staff concluded that: (1) There is no change in the types or significant increase in the amounts of any effluents that may be released offsite; (2) there is no significant increase in individual or cumulative occupational radiation exposure; (3) there is no significant construction impact; (4) there is no significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents; (5) the proposed changes do not result in the possibility of a new or different kind of accident; (6) there is no significant reduction in any margin of safety; and (7) the proposed changes will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs. The basis for this determination for the amendment request is shown below.

The NRC staff has reviewed the certificate amendment application and concluded that it provides reasonable assurance of adequate safety, safeguards, and security, and compliance with NRC requirements. Therefore, the Director, Office of Nuclear Material Safety and Safeguards, is prepared to issue an amendment to the Certificate of Compliance for the Portsmouth Gaseous Diffusion Plant (PORTS). The staff has prepared a Compliance Evaluation Report which provides details of the staff's evaluation.

The NRC staff has determined that this amendment satisfies the criteria for a categorical exclusion in accordance with 10 CFR 51.22(c)(19). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for this amendment.

USEC or any person whose interest may be affected may file a petition, not exceeding 30 pages, requesting review of the Director's Decision. The petition must be filed with the Commission not later than 15 days after publication of this **Federal Register** Notice. A petition for review of the Director's Decision shall set forth with particularity the interest of the petitioner and how that interest may be affected by the results of the decision. The petition should specifically explain the reasons why review of the Decision should be permitted with particular reference to the following factors: (1) The interest of the petitioner; (2) how that interest may be affected by the Decision, including the reasons why the petitioner should be permitted a review of the Decision; and (3) the petitioner's areas of concern about the activity that is the subject matter of the Decision. Any person described in this paragraph (USEC or any person who filed a petition) may file a response to any petition for review, not to exceed 30 pages, within 10 days after filing of the petition. If no petition is received within the designated 15-day period, the Director will issue the final amendment to the Certificate of Compliance without further delay. If a petition for review is received, the decision on the amendment application will become final in 60 days, unless the Commission grants the petition for review or otherwise acts within 60 days after publication of this **Federal Register** Notice.

A petition for review 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.

For further details with respect to the action see (1) the application for amendment and (2) the Commission's Compliance Evaluation Report. These items 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.

Date of amendment request: October 14, 1998.

Brief description of amendment: The amendment involves extension of the PORTS Compliance Plan completion date related to the removal of residual quantities of highly enriched uranium (HEU) (uranium enriched to 10 percent by weight U–235 or more) from cylinders and the cleaning of the emptied HEU cylinders from December 31, 1998, to March 31, 2000. The amendment also involves extension of the PORTS Compliance Plan completion date, for transition of regulatory oversight responsibility from the Department of Energy (DOE) to the NRC, for the section of the X–705 decontamination building where HEU cylinder cleaning operations are ongoing, from January 31, 1999, to April 30, 2000. All Compliance Plan completion date changes require prior DOE approval. As such, USEC requested DOE approval for the above-mentioned date changes on September 25, 1998. On October 13, 1998, DOE approved the revision.

Basis for finding of no significance: 1. The proposed amendment will not result in a change in the types or significant increase in the amounts of any effluents that may be released offsite.

The proposed amendment, which involves extensions of the PORTS Compliance Plan completion dates, does not involve any need for cleaning of additional HEU cylinders and therefore would not increase the amounts of any effluents that may be released offsite or result in any impact to the environment.

2. The proposed amendment will not result in a significant increase in individual or cumulative occupational radiation exposure.

The proposed amendment does not involve any need for cleaning of additional HEU cylinders. Therefore, it will not significantly increase individual or cumulative occupational radiation exposure.

3. The proposed amendment will not result in a significant construction impact.

The proposed change will not result in any construction, nor will this change effect any planned or existing construction project, therefore, there will be no construction impact.

4. The proposed amendment will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

The proposed amendment does not involve any need for cleaning of additional HEU cylinders and will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

5. The proposed amendment will not result in the possibility of a new or different kind of accident.

The proposed amendment only involves extensions of the PORTS Compliance Plan completion dates. Therefore, this change will not result in the possibility of a new or different kind of accident.

6. The proposed amendment will not result in a significant reduction in any margin of safety.

The proposed amendment only involves extensions of the PORTS Compliance Plan completion dates. Therefore, the proposed change does not represent a reduction in any margin of safety.

7. The proposed amendment will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs.

Currently, at PORTS, the X–705 West Annex is the only area leased by USEC from DOE which has not been certified by the NRC. Based on the agreement signed between DOE and USEC on October 11, 1995, the Regulatory Oversight Agreement between DOE and USEC is required to apply to all areas leased by USEC from DOE but not certified by the NRC. As such, operations in the X–705 West Annex will continue to be conducted under regulation of the ROA until the HEU cylinder cleaning operations have been completed and the X–705 West Annex is certified by the NRC. While the ROA is in effect, DOE staff has informed the NRC staff, that they will maintain regulatory staff in Oak Ridge, Tennessee, and a resident inspector at PORTS, to ensure that HEU cylinder cleaning is conducted in a safe and secure manner. In addition, the NRC staff has also reviewed the controls in place in the X–705 West Annex, which are relied upon by USEC to prevent it from exceeding the NRC-possession limits by accidentally transferring significant quantities of HEU from the X–705 West Annex to NRC-certified areas. The NRC staff has determined these controls, as well as DOE's regulatory oversight of the X–705 West Annex operations, to be sufficient for preventing USEC from exceeding its possession limits in NRC-certified areas at PORTS. Therefore, the Compliance Plan date extensions will not result in undue risk to the public health and safety, common defense and security, or the environment.

Effective date: The amendment to GDP–2 will become effective upon issuance by NRC.

Certificate of Compliance No. GDP–2: This amendment will revise Issue A.4 of the PORTS Compliance Plan.

Local Public Document Room location: Portsmouth Public Library, 1220 Gallia Street, Portsmouth, Ohio 45662

Dated at Rockville, Maryland, this 2d day of December, 1998.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–32637 Filed 12–8–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–160]

Georgia Institute of Technology, Georgia Tech Research Reactor; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission or NRC) is considering issuance of an exemption from the requirements of its regulations to Facility Operating License No. R–97, a license held by the Georgia Institute of Technology (Georgia Tech or the licensee). The exemption would apply to the Georgia Tech Research Reactor (GTRR), a shutdown and defueled facility located in Atlanta, Georgia.

Environmental Assessment

Identification of the Proposed Action

The proposed exemption would eliminate emergency response plan requirements due to the shutdown and defueled status of the GTRR facility.

The proposed action is in accordance with the licensee's application dated August 20, 1998. The requested action would grant an exemption from the requirements of 10 CFR 50.54(q) for emergency planning.

The Need for the Proposed Action

The nuclear fuel was removed from the GTRR in February 1996. By NRC License Amendment No. 12, dated April 2, 1998, the authority to operate the reactor was removed and the licensee was authorized to possess the residual by-product material. The tritiated heavy water was removed from the facility in July 1998. In this shutdown and defueled condition, the facility poses a reduced risk to public health and safety. Because of this reduced risk, the requirements of 10 CFR 50.54(q) are no longer required. An exemption is required from 10 CFR 50.54(q) to allow the licensee to drop the requirement to maintain and implement the Emergency Plan for the GTRR.

Environmental Impact of the Proposed Action

Before issuing the proposed exemption, the Commission will have concluded that the granting of the exemption from certain portions of 10 CFR 50.54(q) is acceptable, as describe in the exemption. The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the exemption would result in no change in current environmental impacts. The environmental impacts of the proposed

action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Georgia Tech Research Reactor.

Agencies and Persons Consulted

In accordance with its stated policy, on November 25, 1998, the NRC staff has consulted with Mr. Thomas Hill of the State of Georgia, Radioactive Materials Program, Department of Natural Resources, regarding the environmental impacts of the proposed action. The State official had no comment regarding environmental impacts of the proposed action.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to this action, see the licensee letter dated August 20, 1998, which is available for public review at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC.

Dated at Rockville, Maryland, this 3rd day of December 1998.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 98–32638 Filed 12–8–98; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–309]

Maine Yankee Atomic Power Company, Maine Yankee Atomic Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.54(w) and 10 CFR 140.11(a)(4) regarding financial protection requirements to Facility Operating License No. DPR–36, a license held by the Maine Yankee Atomic Power Company (MYAPCo or the licensee). The exemption would apply to the Maine Yankee Atomic Power Station, a permanently shutdown plant located at the MYAPC site in Lincoln County, Maine.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the requirements of 10 CFR 50.54(w) regarding the amount of onsite property insurance required for the licensee and from the requirements of 140.11(a)(4) regarding the amount of offsite property insurance required for the licensee. The proposed action is in accordance with the licensee's application dated January 20, 1998. The requested action would allow MYAPCo to reduce onsite insurance coverage to $50 million and offsite coverage to $100 million. In addition, MYAPCo would be allowed to withdraw from the secondary liability coverage of requirements of 10 CFR 140.11(a)(4).

Need for the Proposed Action

Maine Yankee was shut down in December 1996. By letter dated August 7, 1997, the licensee informed the Commission that it had decided to permanently cease operations at Maine Yankee Atomic Power Station and that all fuel had been permanently removed from the reactor. In accordance with 10 CFR 50.82(a)(2), upon docketing of the certifications in the letter of August 7, 1997, the facility operating license no longer authorizes MYAPCo to operate the reactor and to load fuel in the reactor vessel. In this permanently shutdown condition, the facility poses a reduced risk to public health and safety.

The proposed exemption is needed because the licensee's required insurance coverage significantly exceeds the potential cost consequences of radiological incidents possible at a permanently shutdown and defueled nuclear power plant that has cooled more than 21 months. Since Maine Yankee no longer contributes as great a risk as does an operating plant, this reduction in risk should be reflected in the indemnification requirements to which the licensee is subject. Approval of this request would allow a more equitable allocation of financial risk.

Environmental Impact of the Proposed Action

The NRC's evaluation of the proposed exemption from 10 CFR 50.54(w) and 10 CFR 140.11(a)(4) indicates that issuance of the proposed exemption is an administrative action that will not have any environmental impact. The licensee maintains and operates the plant in a configuration necessary to support the safe storage of spent fuel and to comply with the facility operating license and NRC's rules and regulations.

No changes are being made in the types or amounts of any radiological effluents that may be released off site. There is no significant increase in occupational or public radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed exemption does not affect nonradiological plant effluents and has no other nonradiological environmental impact.

Therefore, the Commission concludes that there are no significant environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no significant environmental impact associated with the proposed exemption, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the action would be to deny the request, thereby requiring the licensee to maintain insurance coverage required of an operating plant (no-action alternative); such an action would not enhance the protection of the environment. Denial of the application would result in no change in current environmental impacts. The impacts of the proposed action and the alternative are similar.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement related to operation of Maine Yankee Atomic Power Station, (July 1972).

Agencies and Persons Consulted

In accordance with its stated policy, on October 1, 1998, the NRC staff consulted with Mr. Patrick Dostie of the State of Maine, Department of Human Services, regarding the environmental impact of the proposed action. He did not object to issuance of the exemption.

Finding of No Significant Impact

On the basis of the environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

Accordingly, the Commission will not prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the licensee's letters, dated January 20 and May 15, 1998, which are available for public inspection at the Commission Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC, and at the Local Public Document Room at the Wiscasset Public Library, High Street, Post Office Box 367, Wiscasset, Maine, 04578.

Dated at Rockville, Maryland, this 2nd day of December 1998.

For The Nuclear Regulatory Commission

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 98–32639 Filed 12–8–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–220]

Niagara Mohawk Power Corporation; Nine Mile Point Nuclear Station, Unit No. 1 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License No. DPR–63, issued to Niagara Mohawk Power Corporation (the licensee), for operation of the Nine Mile Point Nuclear Station, Unit No. 1, located in the town of Scriba, Oswego County, New York.

Environmental Assessment

Identification of the Proposed Action:

The proposed action would exempt the licensee from the requirement of 10 CFR 70.24, that requires that the licensee maintain, in each area in which special nuclear material is handled, used, or stored, a monitoring system that will energize clearly by audible alarms if accidental criticality occurs. The proposed action would also exempt the licensee from the requirements to maintain emergency procedures for each area in which this special nuclear material is handled, used, or stored to ensure that all personnel withdraw to an area of safety upon sounding of the alarm, to familiarize personnel with the evacuation plan, to designate responsible individuals for safety upon sounding of the alarm, and to place radiation survey instruments in accessible locations for use in such an emergency. The proposed action is in accordance with the licensee's application for an exemption dated November 6, 1998.

The Need for the Proposed Action

The purpose of 10 CFR 70.24 is to ensure, if a criticality were to occur during the handling of special nuclear material, personnel would be alert to the fact and would take appropriate action. At a commercial nuclear power plant, the inadvertent criticality with which 10 CFR 70.24 is concerned could occur during fuel handling operations. The special nuclear material that could be assembled in a critical mass at a commercial nuclear power plant is in the form of nuclear fuel; the quantity of other forms of special nuclear material that is stored onsite at a given location is small enough to preclude achieving a critical mass. Because the fuel is not enriched beyond 5.0 weight percent uranium-235, and because commercial nuclear plant licensees have procedures and features that are designed to prevent inadvertent criticality, the staff has determined that an inadvertent criticality would not likely occur due to the handling of special nuclear material at a commercial power reactor. Therefore, the requirements of 10 CFR 70.24 are not necessary to ensure the safety of personnel during the handling of special nuclear materials at commercial power reactors.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that inadvertent or accidental criticality will be precluded through compliance with Nine Mile Point Nuclear Station, Unit No. 1 Technical Specifications, the design of the fuel storage racks providing geometric spacing of the fuel assemblies in their storage locations, and administrative controls imposed on fuel handling procedures. The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action. Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action, (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements related to the operation of Nine Mile Point Nuclear Station, Unit No. 1, dated January 1974 (39 **Federal Register** 3309, dated January 25, 1974).

Agencies and Persons Consulted

In accordance with its stated policy, on November 19, 1998, the staff consulted with the New York State official, Jack Spath of the New York State Research and Development Authority, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated November 6, 1998, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, D.C., and at the local public document room located at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 3rd day of December 1998.

For the Nuclear Regulatory Commission.

S. Singh Bajwa,

Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–32625 Filed 12–8–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

State of Maine: Discontinuance of Certain Commission Regulatory Authority and Responsibility Within The State: Republication

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Agreement with State of Maine: Republication.

SUMMARY: The Nuclear Regulatory Commission is publishing a **Federal Register** notice containing the Maine Agreement to correct a reference to the Maine revised statutes.

FOR FURTHER INFORMATION CONTACT: Thomas J. O'Brien, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (301) 415–2308.

SUPPLEMENTARY INFORMATION:

The Nuclear Regulatory Commission (NRC) is publishing a **Federal Register** notice originally published on Thursday, April 16, 1992 (57 FR 13388). The NRC is republishing this document because of an incorrect reference made to ''Maine Revised Statutes Annotated Section 284.'' The reference should read ''Maine Revised Statutes Annotated Section 684.'' The Agreement is published in accordance with the requirements of Public Law 86–373 (Section 274 of the Atomic Energy Act of 1954, as amended). The exemptions from the Commission's licensing authority have been published in the **Federal Register** and codified as Part 150 of the Commission's regulations in Title 10 of the Code of Federal Regulations. The complete version of the April 16, 1992, **Federal Register** notice is presented below with the corrected citation.

Dated at Rockville, Maryland, this 2nd day of December, 1998.

For the Nuclear Regulatory Commission.

Richard L. Bangart,

Director, Office of State Programs.

AGREEMENT BETWEEN THE UNITED STATES NUCLEAR REGULATORY COMMISSION AND THE STATE OF MAINE FOR DISCONTINUANCE OF CERTAIN COMMISSION REGULATORY AUTHORITY AND RESPONSIBILITY WITHIN THE STATE PURSUANT TO SECTION 274 OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

Whereas, The United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as defined in Sections 11e.(1) and (2) of the Act, source materials and special nuclear materials in quantities not sufficient to form a critical mass; and

Whereas, The Governor of the State of Maine is authorized under Maine Revised Statutes Annotated Section 684 to enter into this Agreement with the Commission; and

Whereas, The Governor of the State of Maine certified on March 5, 1990, that the State of Maine (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by this Agreement, and that the State desires to assume regulatory responsibility for such materials; and

Whereas, The State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and

Whereas, The Commission and the State recognize the desirability of reciprocal recognition of licenses and exemptions from licensing of those materials subject to this Agreement; and

Whereas, This Agreement is entered into pursuant to the provisions of the Act, as amended;

Now therefore, it is hereby agreed between the Commission and the Governor of the State, acting in behalf of the State, as follows:

Article I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following materials:

A. Byproduct materials as defined in Section 11e.(1) of the Act;

B. Source materials; and

C. Special nuclear materials in quantities not sufficient to form a critical mass.

Article II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of:

A. The construction and operation of any production or utilization facility;

B. The export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

C. The disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulations or orders of the Commission;

D. The disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission;

E. The land disposal of source, byproduct and special nuclear material received from other persons; and

F. The extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material.

Article III

This Agreement may be amended, upon application by the State and approval by the Commission, to include the additional area(s) specified in Article II, paragraph E or F, whereby the State can exert regulatory control over the materials stated herein.

Article IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

Article V

This Agreement shall not affect the authority of the Commission under subsection 161 b. or i. of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data or to guard against the loss or diversion of special nuclear material.

Article VI

The Commission will use its best efforts to cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that

State and Commission programs for protection against hazards of radiation will be coordinated and compatible. The State will use its best efforts to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of like materials. The State and the Commission will use their best efforts to keep each other informed of proposed changes in their respective rules and regulations and licensing, inspection and enforcement policies and criteria, and to obtain the comments and assistance of the other party thereon.

Article VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any Agreement State. Accordingly, the Commission and the State agree to use their best efforts to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

Article VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State, may terminate or suspend all or part of this Agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect the public health and safety, or (2) the State has not complied with one or more of the requirements of Section 274 of the Act. The Commission may also, pursuant to Section 274j of the Act, temporarily suspend all or part of this Agreement if, in the judgement of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review this Agreement and actions taken by the State under this Agreement to ensure compliance with Section 274 of the Act.

Article IX

This Agreement shall become effective on April 1, 1992, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at Rockville, Maryland in triplicate, this 16th day of March, 1992.

For the United States Nuclear Regulatory Commission, Ivan Selin, Chairman.

Done at Augusta, Maine, in triplicate, this 25th day of March, 1992.

For the State of Maine, John R. McKernan, Jr., Governor.

Dated at Rockville, this 9th day of April, 1992.

For the United States Nuclear Regulatory Commission.

Sheldon A. Schwartz,

Deputy Director, Office of State Programs.

[FR Doc. 98–32636 Filed 12–8–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Licenses of Broad Scope; Reopening of Public Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Reopening of public comment period.

SUMMARY: On September 16, 1998, the Nuclear Regulatory Commission (NRC) announced the availability of and requested comment on draft NUREG–1556, Volume 11, ''Consolidated Guidance about Materials Licenses: Program-Specific Guidance about Licenses of Broad Scope,'' dated August 1998 (63 FR 49615). The comment period for NUREG–1556, Volume 11, expired on December 7, 1998. A commenter noted that the original comment period was too short to thoroughly review, understand, and comment on the document. In response to this comment and to ensure that all interested parties have an opportunity to provide comments, the Commission has decided to reopen the comment period for NUREG–1556, Volume 11.

DATES: The comment period has been reopened and will now expire on December 31, 1998. Comments received after this date will be considered if it is practical to do so, but the Commission is only able to ensure consideration of comments received on or before this date.

ADDRESSES: Submit written comments to: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U. S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand-deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays. Comments may also be submitted through the Internet by addressing electronic mail to DLM1@NRC.GOV.

Those considering public comment may request a free single copy of draft NUREG–1556, Volume 11, by writing to the U.S. Nuclear Regulatory Commission, ATTN: Mrs. Sally L. Merchant, Mail Stop TWFN 9–F–31, Washington, DC 20555–0001. Alternatively, submit requests through the Internet by addressing electronic mail to slm2@nrc.gov. A copy of draft NUREG–1556, Volume 11, is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Mrs. Sally L. Merchant, Mail Stop TWFN 9–F–31, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7874; electronic mail address: *slm2@nrc.gov.*

Electronic Access

Draft NUREG–1556, Vol. 11 is available electronically by visiting NRC's Home Page (http://www.nrc.gov/NRC/nucmat.html).

Dated at Rockville, Maryland, this 3rd day of December, 1998.

For the Nuclear Regulatory Commission.

Josephine M. Piccone,

Chief, Rulemaking and Guidance Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–32633 Filed 12–8–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Final Comments on Draft Nureg–1628 ''Staff Responses to Frequently Asked Questions Concerning Decommissioning of Nuclear Power Reactors''

The U.S. Nuclear Regulatory Commission is announcing that final comments on NUREG–1628, ''Staff Responses to Frequently Asked Questions Concerning Decommissioning of Nuclear Power Reactors,'' are due by January 30, 1999. NUREG–1628 was issued for public comment on April 21, 1998.

This document, through a question-and-answer format, provides general information on decommissioning to members of the public. As a result of comments received to date from

members of the public, the final document will be updated.

The report contains information on the following topics as they relate to decommissioning: decommissioning alternatives, experience in the U.S. regulation of decommissioning, low-level waste storage and disposal of wastes associated with facility storage and decommissioning, high-level waste storage and disposal, license termination, and hazards associated with decommissioning.

Comments on NUREG–1628 should be sent to the Chief, Rules Review and Direction Branch, Office of Administration, Mail Stop T6–D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or fax comments to 301–415–3313. For further information, contact John L. Minns, Non-Power Reactors and Decommissioning Project Directorate, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3166.

Dated at Rockville, Maryland, this 2nd day of December 1998.

For the Nuclear Regulatory Commission

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 98–32632 Filed 12–8–98; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

SES Performance Review Board

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the OPM Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Mark Reinhold, Office of Human Resources and EEO, Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415, (202) 606–1882.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Office of Personnel Management.

Janice R. Lachance,

Director.

The following have been designated as regular members of the Performance Review Board of the Office of Personnel Management:

John U. Sepulveda, Deputy Director
Leigh Shein, Chief of Staff
William E. Flynn, Associate Director
Henry Romero, Associate Director
Richard A. Ferris, Associate Director
Mary Lou Lindholm, Associate Director
Carol J. Okin, Associate Director
Donna D. Beecher, Director of Human Resources and EEO

[FR Doc. 98–32652 Filed 12–8–98; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23581; 812–11408]

CCB Funds; Notice of Application

December 1, 1998.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application under section 17(b) of the Investment Company Act of 1940 (''Act'') for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicant, CCB Funds (formerly, 111 Corcoran Funds) (''Trust''), on behalf of its portfolio CCB Equity Fund (''Fund''), seeks an order to permit an in-kind redemption of shares of the Fund by an affiliated person of the Fund.

FILING DATE: The application was filed on November 18, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 24, 1998, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, Federated Investors Tower, Pittsburgh, Pennsylvania 15222–3779.

FOR FURTHER INFORMATION CONTACT: Edward P. Macdonald, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street, N.W., Washington, D.C. 20549 (tel. no. 202–942–8090).

Applicant's Representations

1. The Trust, organized as a Massachusetts business trust, is registered under the Act as an open-end management investment company. The Fund is a series of the Trust. Central Carolina Bank and Trust Company (''Adviser'') serves as the Fund's investment adviser. The Adviser is exempt from registration under the Investment Advisers Act of 1940 (''Advisers Act''). Franklin Street Advisors, Inc., registered under the Advisers Act, serves as the Fund's subadviser (''Sub-Adviser''). The Adviser and the Sub-Adviser are not affiliated.

2. North Carolina Employees State Retirement System (''Affiliated Shareholder'') is a retirement trust for employees of the state of North Carolina. The Affiliated Shareholder owns approximately 83.7% of the outstanding shares of the Fund.

3. The Affiliated Shareholder has concluded that the assets invested in the Fund should be managed directly by the Sub-Adviser. The Affiliated Shareholder has notified the Fund that it intends to redeem all of its shares of the Fund. On November 17, 1998, the Fund's board of trustees, including all of the independent trustees, determined that it would be in the best interests of the Fund and its shareholders to redeem the shares of the Affiliated Shareholder in-kind.

Applicant's Legal Analysis

1. Section 17(a)(2) of the Act generally prohibits an affiliated person of a registered investment company, acting as principal, from knowingly purchasing any security from the company. Section 2(a)(3)(A) of the Act defines ''affiliated person'' of another person to include, among others, any person owning 5% or more of the outstanding voting securities of the other person and any person controlling, controlled by or under common control with the other person. Under section 2(a)(9) of the Act, a person that owns beneficially more than 25% of the voting securities of a

company is presumed to control the company.

2. Section 17(b) of the Act provides that, notwithstanding section 17(a) of the Act, the Commission shall exempt a proposed transaction from section 17(a) of the Act if evidence establishes that: (a) the terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policy of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. Applicant states that the Affiliated Shareholder is an affiliated person of the Fund because it owns beneficially in excess of 25% of the Fund's shares. To the extent that the proposed in-kind redemption would be considered to involve the ''purchase'' of the Fund's portfolio securities by the Affiliated Shareholder, applicant states that the proposed in-kind redemption would be prohibited by section 17(a)(2) of the Act.

4. Applicant submits that the terms of the proposed in-kind redemption meet the standards set forth in section 17(b) of the Act. Applicant asserts that neither the Adviser nor the Affiliated Shareholder will have any opportunity to select the specific portfolio securities to be distributed. Rather, the Affiliated Shareholder will receive a pro rata share of each portfolio security held by the Fund, except for odd lot securities, fractional shares and accrual on such securities. Applicant further states that the portfolio securities to be distributed to the Affiliated Shareholder will be valued according to an objective, verifiable standard and that the in-kind redemption is consistent with the investment policies of the Fund. Applicant also states that the proposed in-kind redemption is consistent with the general purposes of the Act.

Applicant's Conditions

Applicant agrees that any order granting the requested relief will be subject to the following conditions:

1. The Fund will distribute to the Affiliated Shareholder pursuant to the in-kind redemption of pro rata share of each portfolio security held by the Fund (''In-Kind Securities''), provided that the Fund may distribute cash in lieu of odd lot securities, fractional shares and accruals on such securities.

2. The In-Kind Securities distributed to the Affiliated Shareholder will be valued in the same manner as they would be valued for purposes of computing the Fund's net asset value.

3. The Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which the proposed in-kind redemption occurs, the first two years in an easily accessible place, a written record of the rdemption setting forth a description of each security distributed in-kind, the terms of the in-kind distribution and the information or materials upon which the valuation was made.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32600 Filed 12–8–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23586; 812–11364]

Credit Suisse First Boston Corporation; Notice of Application

December 2, 1998.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 12(d)(1) of the Act, under section 6(c) of the Act for an exemption from section 14(a) of the Act, and under section 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Credit Suisse First Bost Corporation (''CSFB'') requests an order with respect to the SAILS trusts (''SAILS Trusts'') and future trusts that are substantially similar to the SAILS Trusts and for which CSFB will serve as a principal underwriter (collectively, the ''Trusts'') that would (i) permit other registered investment companies, and companies excepted from the definition of investment company under section 3(c)(1) or (c)(7) of the Act, to own a greater percentage of the total outstanding voting stock (the ''Securities'') of any Trust than that permitted by section 12(d)(1), (ii) exempt the Trusts from the initial net worth requirements of section 14(a), and (iii) permit the Trusts to purchase U.S. government securities from CSFB at the time of a Trusts' initial issuance of Securities.

FILING DATE: The application was filed on October 19, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving CSFB with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 28, 1998, and should be accompanied by proof of service on CSFB, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, Credit Suisse First Boston Corporation, Eleven Madison Avenue, New York, New York 10010–3629.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Staff Attorney, at (202) 942–0634, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicant's Representations

1. Each Trust will be limited-grantor trust registered under the Act as a non-diversified, closed-end management investment company. CSFB will serve as a principal underwriter (as defined in section 2(a)(29) of the Act) of the Securities issued to the public by each Trust.

2. Each Trust will, at the time of its issuance of Securities, (i) enter into one or more forward purchase contracts (the ''Contracts'') with a counterparty to purchase a formulaically-determined number of a specified equity security or securities (the ''Shares'') of one specified issuer,[1] and (ii) in some cases, purchase certain U.S. Treasury securities (''Treasures''), which may include interest-only or principal-only securities maturing at or prior the Trust's termination. The Trusts will purchase the Contracts from counterparties that are not affiliated with either the relevant Trust or CSFB. The investment objective of each Trust will be to provide to each holder of Securities (''Holder'') (i) current cash distributions from the proceeds of any

[1] Initially, no Trust will hold Contracts relating to the Shares of more than one issuer. However, if certain events specified in the Contracts occur, such as the issuer of Shares spinning-off securities of another issuer to the holders of the Shares, the Trust may receive shares of more than one issuer at the termination of the Contracts.

Treasuries, and (ii) participation in, or limited exposure to, changes in the market value of the underlying Shares.

3. In all cases, the Shares will trade in the secondary market and the issuer of the Shares will be a reporting company under the Securities Exchange Act of 1934. The number of Shares, or the value of the Shares, that will be delivered to a Trust pursuant to the Contracts may be fixed (*e.g.*, one Share per Security issued) or may be determined pursuant to a formula, the product of which will vary with the price of the Shares. A formula generally will result in each Holder of Securities receiving fewer Shares as the market value of the Shares increases, and more Shares as their market value decreases.[2] At the termination of each Trust, each Holder will receive the number of Shares per Security, or the value of the Shares, as determined by the terms of the Contracts, that is equal to the Holder's pro rata interest in the Shares or amount received by the Trust under the Contracts.[3]

4. Securities issued by the Trusts will be listed on a national securities exchange or traded on The Nasdaq National Market System. Thus, the Securities will be ''national market system'' securities subject to public price quotation and trade reporting requirements. After the Securities are issued, the trading price of the Securities is expected to vary from time to time based primarily upon the price of the underlying Shares, interest rates, and other factors affecting conditions and prices in the debt and equity markets. CSFB currently intends, but will not be obligated, to make a market in the Securities of each Trust.

5. Each Trust will be internally managed by three trustees and will not have a separate investment adviser. The trustees will have limited or no power to vary the investments held by each Trust. A bank or banks qualified to serve as a trustee under the Trust Indenture Act of 1939, as amended, will act as custodial for each Trust's assets and as administrator, paying agent, registrar, and transfer agent with respect to the Securities of each Trust. Any such bank will have no other affiliation with, and will not be engaged in any other transaction with, any Trust. The day-to-day administration of each Trust will be carried out by CSFB or by the bank.

6. The Trusts will be structured so that the trustees are not authorized to sell the Contracts or Treasuries under any circumstances or only upon the occurrence of certain events under a Contract. The Trusts will hold the Contracts until maturity or any earlier acceleration, at which time they will be settled according to their terms. However, in the event of the bankruptcy or insolvency of any counterparty to a Contract with a Trust, or the occurrence of certain other events provided for in the Contract, the obligations of the counterparty under the Contract may be accelerated and the available proceeds of the Contract will be distributed to the Holders.

7. The trustees of each Trust will be selected initially by CSFB, together with any other initial Holders, or by the grantors of the Trust. The Holders of each Trust will have the right, upon the declaration in writing or vote of more than two-thirds of the outstanding Securities of the Trust, to remove a trustee. Holders will be entitled to a full vote for each Security held on all matters to be voted on by Holders and will not be able to cumulate their votes in the election of trustees. The investment objectives and policies of each Trust may be changed only with the approval of a ''majority of the Trust's outstanding Securities''[4] or any greater number required by the Trust's constituent documents. Unless Holders so request, it is not expected that the Trusts will hold any meetings of Holders, or that Holders will ever vote.

8. The Trusts will not be entitled to any rights with respect to the Shares until any Contracts requiring delivery of the Shares to the Trust are settled, at which time the Shares will be promptly distributed to Holders. The Holders, therefore, will not be entitled to any rights with respect to the Shares (including voting rights or the right to receive any dividends or other distributions) until receipt by them of the Shares at the time the Trust is liquidated.

9. Each Trust will be structured so that its organizational and ongoing expenses will not be borne by the Holders, but rather, directly or indirectly, by CFSB, the counterparties, or another third party, as will be described in the prospectus for the relevant Trust. At the time of the original issuance of the Securities of any Trust, there will be paid to each of the administrator, the custodian, and the paying agent, and to each trustee, a one-time amount in respect of such agent's fee over its term. Any expenses of the Trust in excess of this anticipated amount will be paid as incurred by a party other than the Trust itself (which party may be CSFB).

Applicant's Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A)(i) of the Act prohibits (i) any registered investment company from owning in the aggregate more than 3% of the total outstanding voting stock of any other investment company, and (ii) any investment company from owning in the aggregate more than 3% of the total outstanding voting stock of any registered investment company. A company that is excepted from the definition of investment company under section 3(c)(1) or (c)(7) of the Act is deemed to be an investment company for purposes of section 12(d)(1)(A)(i) of the Act under sections 3(c)(1) and (c)(7)(D) of the Act. Section 12(d)(1)(C) of the Act similarly prohibits any investment company, other investment companies having the same investment adviser, and companies controlled by such investment companies form owning more than 10% of the total outstanding voting stock of any closed-end investment company.

2. Section 12(d)(1)(J) of the Act provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1), if, and to the extent that, the exemption is consistent with the public interest and protection of investors.

3. CSFB states that, in order for the Trusts to be marketed most successfully, and to be traded at a price that most accurately reflects their value, it is necessary for the Securities of each Trust to be offered to large investment companies and investment company complexes. CSFB states that these investors seek to spread the fixed costs of analyzing specific investment opportunities by making sizable investments in those opportunities. Conversely, CSFB asserts that it may not be economically rational for the investors, or their advisers, to take the time to review an investment opportunity if the amount that the investors would ultimately be permitted

[2] A formula is likely to limit the Holder's participation in any appreciation of the underlying Shares, and it may, in some cases, limit the Holder's exposure to any depreciation in the underlying Shares. It is anticipated that the Holders will receive yield greater than the ordinary dividend yield on the Shares at the time of the issuance of the Securities, which is intended to compensate Holders for the limit on the Holders' participation in any appreciation of the underlying Shares. In some cases, there may be an upper limit on the value of the Shares that a Holder will ultimately receive.

[3] The contracts may provide for an option on the part of a counterparty to deliver Shares, cash, or a combination of Shares and cash to the Trust at the termination of each Trust.

[4] A ''majority of the Trust's outstanding Securities'' means the lesser of (i) 67% of the Securities represented at a meeting at which more than 50% of the outstanding Securities are represented, and (ii) more than 50% of the outstanding Securities.

to purchase is immaterial in light of the total assets of the investment company or investment company complex. Therefore, CSFB argues that these investors should be able to acquire Securities in each Trust in excess of the limitations imposed by sections 12(d)(1)(A)(i) and 12(d)(1)(C). CSFB requests that the SEC issue an order under section 12(d)(1)(J) exempting the Trusts from the limitations.

4. CSFB states that section 12(d)(1) was designed to prevent one investment company from buying control of other investment companies and creating complicated pyramidal structures. CSFB also states that section 12(d)(1) was intended to address the layering of costs to investors.

5. CSFB asserts that the concerns about pyramiding and undue influence generally do not arise in the case of the Trusts because neither the trustees nor the Holders will have the power to vary the investments held by each Trust or to acquire or dispose of the assets of the Trusts. To the extent that Holders can change the composition of the board of trustees or the fundamental policies of each Trust by vote, CSFB argues that any concerns regarding undue influence will be eliminated by a provision in the charter documents of the Trusts that will require any investment companies owning voting stock of any Trust in excess of the limits imposed by sections 12(d)(1)(A)(i) and 12(d)(1)(C) to vote their Securities in proportion to the votes of all other Holders. CSFB also states that the concern about undue influence through a threat to redeem does not arise in the case of the Trusts because the Securities will not be redeemable.

6. Section 12(d)(1) also was designed to address the excessive costs and fees that may result from multiple layers of investment companies. CSFB states that these concerns do not arise in the case of the Trusts because of the limited ongoing fees and expenses incurred by the Trusts and because generally these fees and expenses will be borne, directly or indirectly, by CSFB or another third party, not by the Holders. In addition, the Holders will not, as a practical matter, bear the organizational expenses (including underwriting expenses) of the Trusts. CSFB asserts that the organizational expenses effectively will be borne by the counterparties in the form of a discount in the price paid to them for the Contracts, or will be borne directly by CSFB, the counterparties, or other third parties. Thus, a Holder will not pay duplicative charges to purchase securities in any Trust. Finally, there will be no duplication of advisory fees because the Trusts will be internally managed by their trustees.

7. CSFB asserts that the investment product offered by the Trusts serves a valid business purpose. the Trusts, unlike most registered investment companies, are not marketed to provide investors with either professional investment asset management or the benefits of investment in a diversified pool of assets. Rather, CSFB asserts that the Securities are intended to provide Holders with an investment having unique payment and risk characteristics, including an anticipated higher current yield than the ordinary dividend yield on the Shares at the time of the issuance of the Securities.

8. CSFB believes that the purposes and policies of section 12(d)(1) are not implicated by the Trusts and that the requested exemption from section 12(d)(1) is consistent with the public interest and the protection of investors.

B. Section 14(a)

1. Section 14(a) of the Act requires, in pertinent part, that an investment company have a net worth of at least $100,000 before making any public offering of its shares. The purpose of section 14(a) is to ensure that investment companies are adequately capitalized prior to or simultaneously with the sale of their securities to the public. Rule 14a-3 exempts from section 14(a) unit investment trusts that meet certain conditions in recognition of the fact that, once the units are sold, a unit investment trust requires much less commitment on the part of the sponsor than does a management investment company. Rule 14a-3 provides that a unit investment trust investing in eligible trust securities shall be exempt from the net worth requirement, provided that the trust holds at least $100,000 of eligible trust securities at the commencement of a public offering.

2. CSFB argues that, while the Trusts are classified as management companies, they have the characteristics of unit investment trusts. Investors in the Trusts, like investors in a unit investment trust, will not be purchasing interests in a managed pool of securities, but rather in a fixed and disclosed portfolio that is held until maturity. CSFB believes that the make-up of each Trust's assets, therefore, will be ''locked-in'' for the life of the portfolio, and there is no need for an ongoing commitment on the part of the underwriter.

3. CSFB states that, in order to ensure that each Trust will become a going concern, the Securities of each Trust will be publicly offered in a firm commitment underwriting, registered under the Securities Act of 1933, resulting in net proceeds to each Trust of at least $10,000,000. Prior to the issuance and delivery of the Securities of each Trust to the underwriters, the underwriters will enter into an underwriting agreement pursuant to which they will agree to purchase the Securities subject to customary conditions to closing. The underwriters will not be entitled to purchase less than all of the Securities of each Trust. Accordingly, CSFB states that either the offering will not be completed at all or each Trust will have a net worth substantially in excess of $100,000 on the date of the issuance of the Securities. CSFB also does not anticipate that the net worth of the Trusts will fall below $100,000 before they are terminated.

4. Section 6(c) of the Act provides that the SEC may exempt persons or transactions if, and to the extent that, the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. CSFB requests that the SEC issue an order under section 6(c) exempting the Trusts from the requirements of section 14(a). CSFB believes that the exemption is appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the Act.

C. Section 17(a)

1. Sections 17(a)(1) and (2) of the Act generally prohibit the principal underwriter, or any affiliated person of the principal underwriter, of a registered investment company from selling or purchasing any securities to or from the investment company. The result of these provisions is to preclude the Trusts from purchasing Treasuries from CSFB.

2. Section 17(b) of the Act provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the proposed transaction are reasonable and fair and do not involve overreaching, and the proposed transaction is consistent with the policies of the registered investment company involved and the purposes of the Act. CSFB requests an exemption for sections 17(a)(1) and (2) to permit the Trusts to purchase Treasuries from CSFB.

3. CSFB states that the policy rationale underlying section 17(a) is the concern that an affiliated person of an investment company, by virtue of this relationship, could cause the investment

company to purchase securities of poor quality from the affiliated person or to overpay for securities. CSFB argues that it is unlikely that it would be able to exercise any adverse influence over the Trusts with respect to purchases of Treasuries because Treasuries do not vary in quality and are traded in one of the most liquid markets in the world. Treasuries are available through both primary and secondary dealers, making the Treasuries market very competitive. In addition, market prices on Treasuries can be confirmed on a number of commercially available information screens. CSFB argues that because it is one of a limited number of primary dealers in Treasuries, it will be able to offer the Trusts prompt execution of their Treasury purchases at very competitive prices.

4. CSFB states that it is only seeking relief from section 17(a) with respect to the initial purchase of the Treasuries and not with respect to an ongoing course of business. Consequently, investors will know before they purchase a Trust's Securities the Treasuries that will be owned by the Trust and the amount of the cash payments that will be provided peridically by the Treasuries to the Trust and distributed to Holders. CSFB also asserts that whatever risk there is of overpricing the Treasuries will be borne by the counterparties and not by the Holders because the cost of the Treasuries will be calculated into the amount paid on the Contracts. CSFB argues that, for this reason, the counterparties will have a strong incentive to monitor the price paid for the Treasuries, because any overpayment could result in a reduction in the amount that they would be paid on the Contracts.

5. CSFB believes that the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person, that the proposed transaction is consistent with the policy of each of the Trusts, and that the requested exemption is appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policies and provisions of the Act.

Applicant's Conditions

CSFB agrees that the order granting the requested relief will be subject to the following conditions:

1. Any investment company owning voting stock of any Trust in excess of the limits imposed by section 12(d)(1) of the Act will be required by the Trust's charter documents, or will undertake, to vote its Trust shares in proportion to the vote of all other Holders.

2. The trustees of each Trust, including a majority of the trustees who are not interested persons of the Trust, (i) will adopt procedures that are reasonably designed to provide that the conditions set forth below have been complied with; (ii) will make and approve such changes as are deemed necessary; and (iii) will determine that the transaction made pursuant to the order were effected in compliance with such procedures.

3. The Trusts (i) will maintain and preserve in an easily accessible place a written copy of the procedures (and any modifications to the procedures), and (ii) will maintain and preserve for the longer of (a) the life of the Trusts and (b) six years following the purchase of any Treasuries, the first two years in an easily accessible place, a written record of all Treasuries purchased, whether or not from CSFB, setting forth a description of the Treasuries purchased, the identify of the seller, the terms of the purchase, and the information or material upon which the determinations described below were made.

4. The Treasuries to be purchased by each Trust will be sufficient to provide payments to Holders of Securities that are consistent with the investment objectives and policies of the Trust as recited in the Trust's registration statement and will be consistent with the interests of the Trust and the Holders of its Securities.

5. The terms of the transactions will be reasonable and fair to the Holders of the Securities issued by each Trust and will not involve overreaching of the Trust or the Holders of Securities of the Trust on the part of any person concerned.

6. The fee, spread, or other remuneration to be received by CSFB will be reasonable and fair compared to the fee, spread, or other remuneration received by dealers in connection with comparable transactions at such time, and will comply with section 17(e)(2)(C) of the Act.

7. Before any Treasuries are purchased by the Trust, the Trust must obtain such available market information as it deems necessary to determine that the price to be paid for, and the terms of, the transaction are at least as favorable as that available from other sources. This will include the Trust obtaining and documenting the competitive indications with respect to the specific proposed transaction from two other independent government securities dealers. Competitive quotation information must include price and settlement terms. These dealers must be those who, in the experience of the Trust's trustees, have demonstrated the consistent ability to provide professional execution of Treasury transactions at competitive market prices. They also must be those who are in a position to quote favorable prices.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–32598 Filed 12–8–98; 8:45am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (P.H. Glatfelter Company, Common Stock, $.01 Par Value) File No. 1–3560

December 3, 1998.

P.H. Glatfelter Company (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the American Stock Exchange, Inc. (''Amex'' or ''Exchange'').

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Company's Security has been listed for trading on the Amex and, pursuant to a Registration Statement on Form 8–A which became effective on October 23, 1998, the New York Stock Exchange, Inc. (''NYSE''). Trading in the Company's Security on the NYSE commenced at the opening of business on November 12, 1998, and concurrently therewith such Security was suspended from trading on the Amex.

The Company has complied with Rule 18 of the Amex by filing with the Exchange a certified copy of the resolutions adopted by the Company's Board of Directors authorizing the withdrawal of its Security from listing and registration on the Amex and by setting forth in detail to the Exchange the reasons for such proposed withdrawal, and the facts in support thereof. In making the decision to withdraw its Security from listing on the Amex, the Company has concluded that after the recent acquisition of S&H Papier-Holding GmbH, the specialty paper division of the Schoeller & Hoesch Group, in Germany, a listing on

the NYSE will enhance its international visibility and will foster its reputation as an international producer of fine printing and writing papers, as well as tobacco and other specialty papers.

The Exchange has informed the Company that it has no objection to the withdrawal of the Company's Security from listing and registration on the Amex.

This application relates solely to the withdrawal from listing of the Company's Security from the Exchange and shall have no effect upon the continued listing of the Security on the NYSE.

By reason of Section 12(b) of the Act and the rules and regulations thereunder, the Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission and the NYSE.

Any interested person may, on or before December 24, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–32595 Filed 12–8–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Quebecor Inc., Class A Multiple Voting Shares) File No. 1–7103

December 3, 1998.

Quebecor Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified Security (''Security'') from listing and registration on the American Stock Exchange, Inc. (''Amex'' or ''Exchange'').

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Company has complied with Rule 18 of the Amex by filing with the Exchange a certified copy of the resolutions adopted by the Executive Committee of the Board of Directors of the Company authorizing the withdrawal of its Security from listing on the Amex and by setting forth in detail to the Exchange the reasons for the proposed withdrawal, and the facts in support thereof. In making the decision to withdraw is Security from listing on the Amex, the Company considered the low volume of trading of the Security on the Exchange and the limited number of Security holders residing in the United States, which is decreasing to a level below 300. The Security is currently being traded on the Montreal Exchange and the Toronto Stock Exchange and the Company intends to maintain their listings on these exchanges.

The Exchange has informed the Company that it has no objection to the withdrawal of the Company's Security from listing on the Amex.

The Exchange has informed the Company that it has no objection to the withdrawal of the Company's Security from listing on the Amex.

Any interested person may, on or before December 24, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–32596 Filed 12–8–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23582; 812–11330]

Select Advisors Trust A, et al.; Notice of Application

December 2, 1998.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for exemption under section 17(b) of the Investment Company Act of 1940 (the ''Act'') from section 17(a) of the Act.

SUMMARY OF APPLICATION: The requested order would permit a reorganization involving certain registered investment companies.

APPLICANTS: Select Advisors Trust A (''Trust A''), Select Advisors Trust C (''Trust C''), Select Advisors Portfolio (''Advisors Trust''), The Western and Southern Life Insurance Company (''Western Southern Life''), and The Western and Southern Life Insurance Company Separate Account A (''SAA'').

FILING DATES: The application was filed on September 28, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 28, 1998, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 400 Broadway, Cincinnati, Ohio, 45202.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Staff Attorney, at (202) 942–0634, or Edward P. Macdonald, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, N.W., Washington, D.C. 20549 (tel. no. 202–942–8090).

Applicant's Representations

1. Trust A and Trust C are each an open-end management investment company registered under the Act. Trust A is comprised of eight series (each a ''Trust A Fund'').[1] Trust C is comprised of seven series (each a ''Trust C Fund''). Trust A and Trust C are organized as Massachusetts business trusts. Each Trust A fund and Trust C Fund invests all of its investable assets in a corresponding series of Advisors Trust. Advisors Trust, organized as a New York trust, is registered under the Act as an open-end management investment company. Advisors Trust is comprised of nine series, seven of which will be involved in the proposed reorganization. Trust A, Trust C and Advisors Trust are referred to collectively as the ''Trusts.'' Touchstone Advisors, Inc. (''Touchstone''), registered under the Investment Advisers Act of 1940, serves as the investment adviser to Advisors Trust. Touchstone is a wholly owned subsidiary of Western Southern Life. Western Southern Life owns more than 5%, and in some cases, more than 25% of each Trust A Fund and Trust C Fund.

2. SAA is a separate account of Western Southern Life. SAA holds the assets of the Western Southern Life defined benefit employee pension plan. SAA is exempt from registration under the Act.

3. On June 18, 1998, the board of trustees of each Trust (each a ''Board''), including a majority of the trustees who are not interested persons of the Trusts (the ''Independent Trustees''), considered and approved an agreement and plan of reorganization (''Plan''). Under the Plan, Trust A, Trust C and SAA will redeem in-kind all of their respective interests in Advisors Trust by distributing portfolio securities on a pro rata basis from Advisors Trust to Trust A, Trust C and SAA.

4. Each Trust A Fund will establish three classes of shares—Class A, Class C and Class Y. Existing shareholders of each Trust A Fund will own Class A shares. Trust A will exchange Class C shares for the assets of Trust C that it received from Advisors Trust, and Class Y shares for the assets of SAA that it received from Advisors Trust. Trust A shares delivered to the shareholders of Trust C will have an aggregate net asset value equal to the aggregate net asset value of Trust C shares held by the shareholders prior to the transaction. These transactions are collectively referred to as the ''Reorganization.''

5. On November 3, 1998, Trust A filed with the Commission Post-Effective Amendment No. 8 to its registration statement in which it added Class C and Class Y shares. Class C shares of Trust A will have an identical distribution arrangements structure to that of Trust C. No sales charge will be imposed in connection with the acquisition of Trust A shares by the shareholders of Trust C. Applicants state that the investment objectives, policies and restrictions of each Trust C Fund are identical to those of the acquiring Trust A Fund.

6. The Reorganization is presently expected to occur on or about December 31, 1998. The expenses of the proposed Reorganization will be borne by Touchstone.

7. The Boards, including a majority of the Independent Trustees, determined that the Reorganization is in the best interests of the shareholders of Trust A and Trust C and that the interests of the existing shareholders of Trust A and Trust C would not be diluted as a result of the Reorganization. In assessing the Reorganization, the Boards considered, among other factors: (1) the business objectives and purposes of the Reorganization, (2) the terms and conditions of the Plan, including the allocation of expenses of the Reorganization, and (3) the tax-free nature of the Reorganization.

8. The Reorganization is subject to a number of conditions precedent, including that: (a) definitive proxy solicitation materials will have been filed with the Commission and distributed to shareholders of Trust C; (b) Trust C shareholders will have approved the Reorganization; (c) Trust A and Trust C will have received an opinion of tax counsel that the proposed Reorganization will be tax-free for each Trust A Fund and Trust C Fund and its shareholders; and (d) applicants will have received from the Commission an exemption from section 17(a) of the Act for the Reorganization. The Plan may be terminated and the Reorganization abandoned at any time by mutual consent of the respective Boards of the Trust A and Trust C. Applicants agree not to make any material changes to the Plan without prior Commission approval.

9. Definitive proxy solicitation materials were filed with the Commission on September 29, 1998 and mailed to the Trust C shareholders on October 2, 1998. A special meeting of Trust C shareholders was held on October 29, 1998, and November 19, 1998, and the Reorganization was approved.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of that person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by or under common control with the other person, and (d) if the other person is an investment company, any investment adviser of that company. Under section 2(a)(9) of the Act a person who owns 25% or more of the outstanding voting securities of a company is presumed to control the company.

2. Section 17(b) of the Act provides that the Commission may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

3. Applicants state that the in-kind redemption of shares of Advisors Trust by Trust A, Trust C, and SAA may be prohibited by section 17(a) because Trust A, Trust C, and SAA each own more than 5% of Advisors Trust and Western Southern Life owns more than 5% of each of the Trusts and SAA. To the extent the redemption in-kind is deemed a purchase and sale of the portfolio securities of Advisors Trust, Applicants request an exemption under section 17(b). Applicants state that the standards of section 17(b) are met because the redemption will involve a pro rata distribution of the Advisors Trust portfolio, which will be valued in the same manner in which the net asset value of Advisors Trust is determined. Applicants further state that the transaction has been approved by the Boards of the Trusts and is consistent with the policies of each Trust.

4. Applicants also request an exemption under section 17(b) to permit the merger of Trust C into Trust A and the transfer of assets received by SAA from Advisors Trust to Trust A, in

[1] One series of Trust A, Standby Income Fund, is not involved in the proposed reorganization. Applicants do not seek relief with respect to this series.

exchange for shares of Trust A. Applicants submit that the terms of the proposed Reorganization meet the standards set forth in section 17(b). Applicants state that the Reorganization has been approved by the Boards and the shareholders of Trust C, that it will be effected on the basis of relative net asset values, and that it is consistent with the policies of the Trusts.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32599 Filed 12–8–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23584; File No. 812–11228]

Western-Southern Life Assurance Company; et al.; Notice of Application

December 2, 1998.

AGENCY: The Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order pursuant to Section 26(b) of the Investment Company Act of 1940 (the ''1940 Act'') approving certain substitutions of securities, and pursuant to Section 17(b) of the 1940 Act exempting related transactions from Section 17(a) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered unit investment trusts to substitute shares of certain registered open-end investment companies for shares of certain registered investment companies currently held by those unit investment trusts, and to permit certain in-kind redemptions of portfolio securities in connection with the substitutions.

APPLICANTS: For purposes of the order requested pursuant to Section 26(b), Western-Southern Life Assurance Company, (''WSLAC''), Western-Southern Life Assurance Company Separate Account 1 (''Separate Account 1''), and Western-Southern Life Assurance Company Separate Account 2 (''Separate Account 2'') (collectively, the ''Section 26(b) Applicants''). For purposes of the order pursuant to Section 17(b), the Section 26(b) applicants, the Western and Southern Life Insurance Company (''WSLIC''), and The Western and Southern Life Insurance Company Separate Account A (''Separate Account A'') (collectively, the ''Section 17(b) Applicants'').

FILING DATE: The application was filed on July 20, 1998, and amended and restated on October 2, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 28, 1998, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Donald J. Wuebbling, Esq., Western-Southern Life Assurance Company, The Western and Southern Life Insurance Company, 400 Broadway, Cincinnati, Ohio 45202. Copies to Mark H. Longenecker, Esq. and Karen M. McLaughlin, Esq., Frost & Jacobs LLP, 2500 PNC Center, 201 East Fifth Street, Cincinnati, Ohio 45202.

FOR FURTHER INFORMATION CONTACT: Ethan D. Corey, Senior Counsel, at (202) 942–0675, or Kevin M. Kirchoff, Branch Chief, at (202) 942–0672, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 5th Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicants Representations

1. WSLAC is an Ohio stock life insurance company. WSLAC is the depositor and sponsor of Separate Account 1 and Separate Account 2, separate investment accounts established under Ohio law (collectively, the ''WSLAC Accounts'').

2. WSLAC is a wholly owned subsidiary of WSLIC, a mutual life insurance company originally organized under Ohio law. WSLIC owns of record the assets of Separate Account A, a separate investment account established under Ohio law, which holds the assets of WSLIC's defined benefit employee pension plan.

3. Each of the WSLAC Accounts is registered with the Commission as a unit investment trust. The assets of the WSLAC Accounts support certain individual and group flexible premium deferred variable annuity contracts (collectively, the ''Contracts''). Each of the WSLAC Accounts is divided into eight sub-accounts. Each sub-account invests exclusively in shares representing an interest in a separate corresponding portfolio (each, a ''Portfolio'') of one of two registered open-end diversified management investment companies, Select Advisors Portfolios (''SA Trust'') and Select Advisors Variable Insurance Trust (''VIT''). Two new VIT Portfolios, Touchstone Growth and Income Portfolio and Touchstone Bond Portfolio (collectively, the ''New Touchstone Portfolios'') will be established in connection with the transactions described below.

4. Separate Account A also invests in shares representing an interest in certain Portfolios of the SA Trust. Separate Account A is not registered as an investment company under the 1940 Act pursuant to the exemption provided under Section 3(c)(11) of the 1940 Act.

5. SA Trust has proposed a reorganization in which the master-feeder structure currently employed by SA Trust and its spoke funds, Select Advisors Trust A (''Trust A'') and Select Advisors Trust C, will be replaced with a multi-class structure within Trust A (the ''Reorganization'').

6. As a part of the Reorganization, the Board of Trustees of SA Trust has notified Separate Account 1, Separate Account 2 and Separate Account A (collectively, the ''Accounts'') that it intends to dissolve the SA Trust Growth & Income II Portfolio and the SA Trust Bond II Portfolio (collectively, the ''SAT II Portfolios''). Therefore, the SAT II Portfolios will no longer be available as investment options for the Accounts. Currently, the Accounts are the only interest holders in the SAT II Portfolios.

7. All of the Contracts expressly reserve WSLAC's right, subject to compliance with applicable law, to substitute shares of another open-end management investment company for shares of an open-end management investment company held by a sub-account.

8. In response to the Reorganization, WSLAC, on its own behalf and on behalf of Separate Account 1 and Separate Account 2, and WSLIC, on its own behalf and on behalf of Separate Account A, propose to substitute: (a) shares of VIT Touchstone Growth & Income Portfolio for shares of SA Trust Growth & Income II Portfolio currently held by corresponding sub-accounts of Separate Account 1 and Account 2 and

by Separate Account A; and (b) shares of VIT Touchstone Bond Portfolio for shares of SA Trust Bond II Portfolio currently held by corresponding sub-accounts of Separate Account 1 and Separate Account 2 and by Separate Account A (the ''Substitution''). Applicants assert that the Substitution will benefit the Contract owners and Separate Account because it is designed to provide the affected Contract owners and Separate Account A with an opportunity to continue their investment programs without interruption. In addition, the Substitution will consolidate in VIT all of the investment options related to the sub-accounts of the WSLAC Accounts, thereby permitting WSLAC to present information to Contract owners in a simpler and more concise manner.

9. VIT Touchstone Growth & Income Portfolio will have a substantially identical investment objective, investment policies and investment risks as those of the SA Trust Growth & Income II Portfolio, and will have the same investment adviser and employ the same investment techniques. VIT Touchstone Bond Portfolio will have a substantially identical investment objective, investment policies and investment risks as those of the SA Trust Bond II Portfolio, and will have the same investment adviser and employ the same investment techniques.

10. The total expenses of the SA Trust Growth & Income II Portfolio currently are 0.85%. Likewise, the total expenses of the VIT Touchstone Growth & Income Portfolio are 0.85%. The total expenses of the SA Trust Bond II Portfolio are 0.70%. Likewise, the total expenses of the VIT Touchstone Bond Portfolio are 0.70%.

11. By supplements to the various prospectuses for the Contracts (''Supplements''), all Contract owners will be notified of WSLAC's intention to take the necessary actions, including seeking the order requested by the application, to carry out the Substitution. The Supplements will advise Contract owners that (a) from the date of the Supplement until the date of Substitution, owners will be permitted to make one transfer of all amounts under a Contract invested in the Growth & Income sub-account or the Bond sub-account to another sub-account (except the Bond sub-account or Growth & Income sub-account), (b) such transfer will not count as the one transfer permitted in any 30-day period and (c) such transfer may be in an amount less than the $250 normally required to effect a transfer. The Supplements will also inform Contract owners that WSLAC will not exercise any rights reserved under any Contract to impose additional restrictions on transfers until at least 30 days after the Substitution.

12. WSLAC, on behalf of itself and on behalf of Separate Account 1 and Separate Account 2, states that, within 5 days after the Substitution, it will send to any Contract owner who was affected by the Substitution a written notice informing him or her that the Substitution was carried out. The notice will repeat the information contained in the Supplement about the special rules for transfers from the Growth & Income sub-accounts and/or the Bond sub-accounts. The notice will repeat that WSLAC will not exercise any rights reserved by it under any of the Contracts to impose additional restrictions on transfers until at least 30 days after the Substitution. The notice will explain how to obtain the current VIT prospectus.

13. The Substitution will not result in any change to the Contract fees and charges currently being paid by existing Contract owners.

Applicants' Legal Analysis and Conditions

1. Section 26(b) of the 1940 Act provides that it shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution; and the Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act. Section 26(b) protects the expectation of investors that the unit investment trust will accumulate shares of a particular issuer and is intended to insure that unnecessary or burdensome sales loads, additional reinvestment costs or other charges will not be incurred due to unapproved substitutions of securities.

2. The Section 26(b) Applicants request an order pursuant to Section 26(b) of the 1940 Act approving the Substitution. Applicants represent that the purposes, terms, and conditions of the Substitution are consistent with the protection for which Section 26(b) was designed. The Section 26(b) Applicants believe the Substitution will benefit Contract owners by: (a) minimizing the impact of the Reorganization on Contract owners; and (b) consolidating in VIT all of the investment options related to the sub-accounts of the WSLAC Accounts, thereby permitting WSLAC to present information to Contract owners in a simpler and more concise manner.

3. Contract owners who do not want their assets allocated to the New Touchstone Portfolios would be able to transfer assets to any one of the other sub-accounts available under their Contract without charge prior to or after the Substitution.

4. WSLAC, on behalf of itself and on behalf of Separate Account 1 and Separate Account 2, represents that the Substitution and related redemptions in kind and purchases by WSLAC will not change the dollar value of any Contract owner's investment in either Separate Account 1 or Separate Account 2, the value of any Contract, the accumulation value accredited to any Contract or the death benefit payable under any Contract. Contract owners will not incur any fees, expenses or charges as a result of the proposed transactions nor will their rights or WSLAC's obligations under the Contracts be altered in any way. In addition, Contract owners will not incur any adverse tax consequences because of the proposed substitutions. Furthermore, the proposed transactions will not result in any change to the Contract fees and charges currently being paid by existing Contract owners.

5. Section 17(a)(1) of the 1940 Act prohibits any affiliated person or an affiliate of an affiliated person, of a registered investment company, from selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits such affiliated persons from purchasing any security or other property from such registered investment company.

6. Section 17(b) of the 1940 Act authorizes the Commission to issue an order exempting a proposed transaction from Section 17(a) if: (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the 1940 Act.

7. The Section 17(b) Applicants request an order pursuant to Section 17(b) of the 1940 Act exempting them from the provisions of Section 17(a) to the extent necessary to carry out the proposed redemptions in kind from the SAT II Portfolios and subsequent purchases of shares of the New Touchstone Portfolios (the ''In Kind Transactions'').

8. The Section 17(b) Applicants assert that the proposed In Kind Transactions, including the consideration to be paid

and received, are reasonable and fair and do not involve overreaching on the part of any person concerned. As part of the In Kind Transactions, the purchase and sale of the shares of SA Trust and VIT will be effected at the respective net asset value. The In Kind Transactions will not have a material financial impact on the Contract owners or Separate Account A. The Section 17(b) Applicants also state that the transactions will conform substantially with the conditions enumerated in Rule 17a–7. To the extent that the In Kind Transactions do not comply fully with the provisions of paragraphs (a) and (b) of Rule 17a–7, the Section 17(b) Applicants assert that the terms of the proposed In Kind Transactions provide the same degree of protection to the participating companies and their shareholders as if the In Kind Transactions satisfied all of the conditions enumerated in Rule 17a–7. The Section 17(b) Applicants can also assert that the proposed In Kind Transactions by WSLAC and WSLIC do not involve overreaching on the part of any person concerned. Furthermore, the Section 17(b) Applicants represent that the proposed substitutions will be consistent with the policies of: (a) VIT and the New Touchstone Portfolios; and (b) SA Trust and the SAT II Portfolios, as is, or will be, stated in the registration statement or reports filed under the 1940 Act by each.

9. The Section 17(b) Applicants assert that the In Kind Transactions are consistent with the general purposes of the 1940 Act and that the In Kind Transactions do not present any of the conditions or abuses that the 1940 Act was designed to prevent.

Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the Substitution and In Kind Transactions should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–32597 Filed 12–8–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40732; File No. SR–CBOE–98–09]

Self-Regulatory Organizations; Notice of Withdrawal of Proposed Rule Change and Amendment No. 1 by the Chicago Board Options Exchange, Inc. Relating to Trade Match Delayed Submission Fees

December 1, 1998.

On March 4, 1998, the Chicago Board Options Exchange,Inc.(''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] to amend Exchange Rule 2.30, Trade Match Delayed Submission Fee, to reduce the amount of time permitted for trade submission before the imposition of fees and to include under the rule, all types of trades executed on the Exchange. The Exchange submitted Amendment No. 1 to its proposal on April 20, 1998.[3] Notice of the proposed rule change, as amended, was published on April 30, 1998 in the **Federal Register,** to solicit comment from interested persons.[4] On May 26, 1998, the Exchange withdrew the proposed rule change.[5]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland.

Deputy Secretary.

[FR Doc. 98–32601 Filed 12–8–98; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* Letter from Stephanie C. Mullins, Attorney, Exchange, to Ken Rosen, Attorney, Division of market Regulation (''Division''), Commission, dated April 13, 1998.

[4] Securities Exchange Act Release No. 39910 (April 24, 1994), 63 FR 23817.

[5] *See* Letter from Stephanie C. Mullins, Attorney, Exchange, to Ken Rosen, Attorney, Division, Commission, dated May 26, 1998.

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40729; File No. SR–CBOE–98–47]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 by the Chicago Board Options Exchange, Inc. Relating to Trade Match Delayed Submission Fees

November 30, 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 23, 1998, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change.[3] CBOE submitted to the Commission Amendment No. 1 to its proposal on November 10, 1998.[4] The proposed rule change, as amended, is described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposal on the accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] An earlier version of the proposed rule change was submitted on March 4, 1998, as CBOE–98–09. The Exchange subsequently submitted Amendment No. 1 to CBOE–98–09 on April 20, 1998. The proposed rule change was noticed in the **Federal Register** on April 30, 1998. *See* Exchange Act Release No. 29910 (April 24, 1994), 63 FR 23817. The Commission received no comments on the proposed rule change. Subsequently, the Exchange withdrew its proposed rule change. *See* Letter from Stephanie C. Mullins, Attorney, CBOE, to Ken Rosen, Attorney, Division of Market Regulation (''Division'') Commission, dated May 26, 1998 (''Withdrawal Letter''). The current proposed rule change differs slightly from the original proposed rule change. Generally, in this proposal the Exchange delayed the implementation date of the proposed rule change by six months, made technical changes to its proposed rule language, defined the terms nominee-employee and out-trades, and provided a more detailed explanation of how a financial loss may arise from late trade submissions and an explanation for deleting Rule 2.30(d)(2).

[4] In Amendment No. 1, the Exchange, generally, made technical changes to its proposed rule language, defined the terms nominee-employee and out-trades, and provided a more detailed explanation of how a financial loss may arise from late trade submissions and an explanation for deleting Rule 2.30(d)(2) *See* letter from Stephanie C. Mullins, Attorney, CBOE, to Richard C. Strasser, Assistant Director, Division, Commission, dated November 6, 1998 (''Amendment No. 1'').

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend Exchange Rule 2.30, Trade Match Delayed Submission Fee, to reduce the amount of time permitted for trade submission before the imposition of fees and to include under the rule, all types of trades executed on the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Purpose of the proposed rule change is to expand the scope of CBOE Rule 2.30 to include all types of executed trades and to reduce the amount of time under Rule 2.30 in which Exchange members and clearing firms are assessed fees for late trade submission. Currently, market-makers and clearing firms are assessed fees for delayed trade match submissions if eighty percent of market-maker in-person trades are not submitted in less than two hours. The Exchange proposes to amend this rule to include all types of trades not just market-maker inperson trades) and to require, starting on January 1, 1999, that the submission time for fee assessment be gradually reduced from two hours to one hour. The eighty percent formula will remain the same, as will the provisions for extenuating circumstances.[5]

Non-market-maker trades were not originally included under Rule 2.30 because virtually all non-market-maker activity at that time met the two hour time requirement. Within the revised time frames, ultimately one hour, the Exchange anticipates that a small but significant portion of non-market-maker trades will not be submitted on time. For this reason, all executed trades will be included, so that all parties in the trading process will be held to the same standards.

Under the proposal, the submission time reduction from two hours to one hour will be done gradually over a period of months, so that members and clearing firms will grow accustomed to the tighter time requirement and will be encouraged towards immediate submission of trades. The first time reduction will go into effect on January 1, 1999, and will require timely trade submission to be within ninety minutes of execution. The next reduction would go into effect on April 1, 1999, and will require timely trade submission to be within seventy-five minutes of execution. Finally, from July 1, 1999, forward, the Exchange will require that timely trade submission be within one hour of execution.

Presently, the average submission time for all market-maker trades is thirty-one minutes after execution, and eighty percent of all market-maker trades are submitted within one hour of execution. For non-market-makers, the average submission time is twenty-two minutes, and eighty-seven percent of trades are submitted within one hour of execution. Thus, it should not be a hardship for all members and clearing firms to abide by the proposed rule.

The purpose of this amendment is to increase the speed at which trades are received and matched by the trade match system. With the advent of a more automated trading environment, the current two hour requirement is not stringent enough and may cause the CBOE to be slower than other exchanges in matching trades. More timely trade submission should lead to quicker awareness of out-trades,[6] and consequently could limit financial loss, thereby allowing the Exchange to better compete with the other options exchanges for customer orders.

By making the time requirements for trade submission more stringent, this proposed rule should help members detect out-trades sooner. Once the mistake is discovered, one or both of the parties to the transaction may have to get out of a position or take on a new position to rectify the mistake. The more time that elapses before detection of an out-trade, the more likely it is that the market has shifted away from the market that existed when the trade was executed and the more likely that taking on a new position or getting out of an existing position will incur financial loss.[7] Thus, the potential benefits to members and clearing firms of comparing trades immediately after execution are significant.

Exchange Rule 2.30(c), which formerly was reserved, is proposed to address the situation where a nominee-employee[8] of a clearing member executes and submits trades for that clearing member. Under the proposed rule, if the nominee-employee is assessed a fee for late trade submissions, the clearing member will not be assessed a separate fee. The clearing member will, however, be responsible for the fee assessed against its employee.

Additionally, because of improvements to the Exchange's trade match system and the advances of clearing firms, several sections of Rule 2.30 have become obsolete and are proposed to be eliminated. The proposed rule change would delete Exchange Rule 2.30(d)(2). Since this Rule was last amended, computer processing time has decreased. Thus, the computer processing run performed at the end of the trading day (''First Pass'')[9] may be finished prior to the new submission deadline, rendering the Rule obsolete. Second, trades that are transacted late in the trading day no longer will be late merely by being submitted after the First Pass. Under the original two hour submission requirement and the First Pass schedule, trades submitted after the First Pass would be deemed late because the First Pass always was completed more than two hours after the end of the trading day. Under the proposal, this situation will not always be the case. Additionally, the proposed rule is a more objective criteria and will be unaffected by any future changes in the First Past schedule. Thus, the Exchange proposes to delete Rule 2.30(d)(2).[10]

In addition, when rule 2.30 was initially implemented, a deficient clearing firm exception was included, 2.30(f)(1). This exception waived fifty percent of a market-maker's delayed submission fee if the clearing firm through which the market-maker submitted trades was severely deficient in submitting all of its trades on a particular day. This exception initially was applied infrequently and in the last

[5] Telephone conversation between Stephanie C. Mullins, Attorney, CBOE, and Terri L. Evans, Attorney, Division, Commission, on November 6, 1998. *See also* Amendment No. 1, *supra* note 4.

[6] An out-trade is a transaction that has been executed between two parties where one or more of the terms of the trade do not match. For instance, the parties may have had a misunderstanding on the price, the quantity or the series. *See* Amendment No. 1, *supra* note 4.

[7] *See* Amendment No. 1, *supra* note 4.

[8] Under the Rule, a nominee-employee member is a member who is a clearing member employee. *See* Amendment No. 1, *supra* note 4.

[9] Telephone conversation between Stephanie C. Mullins, Attorney, CBOE, and Terri L. Evans, Attorney, Division, Commission, dated November 10, 1998.

[10] *See* Amendment No. 1, *supra* note 4.

two years has not been applied to a market-maker client of a clearing firm. Due to hand-held trade input terminals and general improvements in trade submission systems, it is nearly impossible for a clearing firm to fall below the deficient clearing firm level of fifty-five percent. Therefore, Exchange Rule 2.30(f)(1) has become obsolete and the Exchange proposes to delete it.

2. Statutory Basis

The Exchange proposes to reduce the amount of time in which trades are submitted, resulting in an improved trade comparison process, thereby serving to promote just and equitable principles of trade and to protect investors and the public interest in furtherance of the objectives of Section 6(b)(5) of the Act.[11]

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, 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 Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–98–47 and should be submitted by December 30, 1998.

[11] 15 U.S.C. 78f(b)(5).

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission believes that the proposal is consistent with the requirements of Section 6(b) of the Act.[12] Specifically, the Commission believes the proposal is consistent with Section 6(b)(5) of the Act,[13] which requires an exchange to have rules designed to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information, and, in general, to protect investors and the public interest.[14] In particular, the Commission believes that the proposed rule change should encourage members to make timely submissions of trade information by reducing the maximum permitted time to submit trade information from two hours to one hour. As a result, the clearing of options transactions should become more efficient, with a reduction in the number of unmatched trades and quicker resolution of out-trades. The Exchange should also be able to monitor its members more effectively for any problems that might disrupt the clearance and settlement process. The Commission also believes that applying CBOE Rule 2.30 to all members and not just market-makers trading in-person should provide for greater integrity of the trade matching and clearing process. The Commission also believes that it is consistent with the Act to delete obsolete provisions of CBOE Rule 2.30.

The Commission also finds the proposed rule change regarding the assessment of a single fee if a delay is caused by a nominee-employee member of a clearing member is consistent with Section 6(b)(4) of the Act,[15] which states that the Exchange may provide for the equitable allocation of reasonable dues, fees, and other charges among its members. Under CBOE Rule 2.30, the timely submission of each individual member and clearing member is measured separately and a fee imposed only if the individual member or clearing member fails to submit at least eighty percent of its trades in a timely manner. Where a nominee-employee of a clearing member is acting on behalf of the clearing member and where the clearing member is ultimately responsible for the nominee-employee, the Commission believes that the proposed rule change equitably allocates the cost of incorporating late trade information by only imposing a single fee on clearing members.

The Exchange has requested that the Commission approve the proposal prior to the thirtieth day after the date of publication of notice of the proposal in the **Federal Register**. Because the Commission believes the proposal should expedite the clearing process, the Commission finds good cause for approving the proposed rule change (SR–CBOE–98–47) prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.[16]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32606 Filed 12–8–98; 8:45 am]

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[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(4).

[16] An earlier version of the proposed rule change was submitted on March 4, 1998, as CBOE–98–09. The proposed rule change, as amended, was noticed in the **Federal Register** on April 30, 1998. *See* Release No. 39910, *supra* note 3. The Commission received no comments on the proposed rule change Subsequently, the Exchange withdrew its proposed rule change. *See* Withdrawal Letter, *supra* note 3.

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40730; File No. SR–CHX–98–26]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Stock Exchange, Inc. Relating to Listing Standards for Equity Linked Debt Securities

November 30, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 6, 1998, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'' or the ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange subsequently filed an amendment to the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change on November 4, 1998.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and simultaneously approving the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add a new Rule 26 to Article XXVIII of the Exchange's rules to adopt listing standards for Equity Linked Debt Securities (''ELDS''). The text of the proposed rule change follows. The text of the new rule is *italicized*.

ARTICLE XXVIII

Equity-Linked Debt Securities

RULE 26. The Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, equity-linked debt securities (''ELDS'') that meet the criteria of this rule. ELDS are limited term non-convertible debt obligations of an issuer where the value of the debt is based, at least in part, on the value of another issuer's common stock or non-convertible preferred stock.

(a) ELDS Issuer Listing Standards

(1) If the ELDS issuer is a company listed on the Exchange, it must be a company in good standing (i.e., meet the Exchange's Tier I or Tier II general listing criteria). If the ELDS issuer is an affiliate of a company listed on the Exchange, the company listed on the Exchange must be a company in good standing. If the ELDS issuer is not listed on the Exchange, the ELDS issuer must meet the size and earnings requirements set forth in the Exchange's Tier I or Tier II Listing Rules. (Sovereign issuers will be evaluated on a case-by-case basis.)

(2) The ELDS issuer must, in all cases, have either

(i) A minimum tangible net worth of $250 million; or

(ii) A minimum tangible net worth of $150 million and the original issue price of the ELDS, combined with all of the issuer's other ELDS listed on a national securities exchange or otherwise publicly traded in the United States, may not be greater than 25 percent of the issuer's net worth at the time of issuance.

(b) ELDS Listing Standards. The issue must have:

(1) At least 1 million ELDS outstanding.

(2) At least 400 holders.

(3) An aggregate market value of at least $4 million.

(4) A term of two to seven years, provided that if the issuer is a non-U.S. company, the issue may not have a term of more than three years.

(c) Linked Equity Listing Standards. An equity security on which the value of the debt is based must:

(1) Have either:

(i) A market capitalization of at least $3 billion and a trading volume of at least 2.5 million shares in the one-year period preceding the listing of the ELDS; or

(ii) A market capitalization of at least $1.5 billion and a trading volume of at least 10 million shares in the one-year period preceding the listing of the ELDS; or

(iii) A market capitalization of at least $500 million and trading volume of at least 15 million shares in the one-year preceding the listing of the ELDS.

(2) Be issued by a company that has a continuous reporting obligation under the Securities Exchange Act of 1934, as amended, and be listed on a national securities exchange or traded through the facilities of a national securities association and be subject to last sale reporting.

(3) Be issued either by:

(i) A U.S. company; or

(ii) A non-U.S. company (including a company that is traded in the United States through American Depositary Receipts (''ADRs'')) if there are at least 2,000 holders of the security, and either

(A) The Exchange, or, if the ELDS is to be traded pursuant to unlisted trading privileges, any other national securities exchange that is the primary U.S. market for such security, has in place with the primary exchange in the country where the security is primarily traded (or, in the case of a sponsored ADR, the primary exchange in the home country where the security underlying the ADR is primarily traded) an effective comprehensive surveillance information sharing agreement,

(B) The ''Relative U.S. Volume'' is at least 50 percent (for purposes of this subsection, the term ''Relative U.S. Volume'' shall mean the ratio of (i) the combined trading volume, on a share-equivalent basis, of the security and related securities (including ADRs overlying such security) in the United States and in any other market with which the Exchange (for ELDS that are listed on the Exchange) or with which any other national securities exchange that is the primary U.S. market for such ELDS (if the ELDS is to be traded on the Exchange pursuant to unlisted trading privileges) has in place an effective, comprehensive surveillance information sharing agreement to (ii) the world-wide trading volume in such securities, or

(C) During the six months preceding the listing of the ELDS on the Exchange (or for ELDS traded on the Exchange pursuant to unlisted trading privileges, preceding the listing of the ELDS on the primary U.S. market for such security), the following trading volume standards were met:

(i) The combined trading volume of the security (including the security itself, any ADR overlying the security (adjusted on a share equivalent basis) and any other classes of stock related to the underlying security) in the United States is at least 20 percent of the combined world-wide trading volume in the security and in related securities.

(ii) The average daily trading volume for the security (or, if traded in the form of an ADR, the ADR overlying such security) in the U.S. market is 100,000 or more shares, and

(iii) The trading volume for the security (or, if traded in the form of an ADR, the ADR overlying such security) is at least 60,000 per day in the U.S. market on a majority of the trading days during the six-month period.

(d) Limits on Number of ELDS. The issuance of ELDS relating to any underlying U.S. security may not exceed five percent of the total outstanding shares of such underlying security. The issuance of ELDS relating to any underlying non-U.S. security or sponsored ADR may not exceed: (1) two percent of the total worldwide outstanding shares of such security if at least 20 percent of the worldwide trading volume in the security and related securities during the six-month period preceding the date of listing occurs in the U.S. market; or (2) three percent of the total worldwide outstanding shares of such security if at least 50 percent of the worldwide trading volume in the security and related securities during the six-month period preceding the date of listing occurs in the U.S. market; or (3) five percent of the total worldwide outstanding shares of such security if at least 70 percent of the worldwide trading volume in the security and related securities during the six-month period preceding the date of listing on the Exchange (for ELDS that are listed on the Exchange) or listing on the national securities exchange that is the primary U.S. market for such ELDS (if the ELDS is to be traded on the Exchange pursuant to unlisted trading privileges) occurs in the U.S. market.

[3] Letter from Patricia L. Levy, Senior Vice President and General Counsel, CHX, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated November 3, 1998 (''Amendment No. 1''). Amendment No. 1 clarified the Additional Requirements for Non-U.S. Companies section of the proposed rule change so that it accurately reflected the rule language.

If an issuer proposed to issue ELDS that relate to more than the allowable percentages of the underlying security specified in this subsection (d), then the Exchange, in consultation with the staff of the Division of Market Regulation of the Securities and Exchange Commission, will evaluate the maximum percentage of ELDS that may be issued on a case-by-case basis.

. . . Interpretation and Policy

.01 Form of Circular to Membership

Prior to the commencement of trading of any new ELDS on the Exchange, the Exchange will issue a circular, substantially in the form set forth below:

Equity-Based Debt Security Membership Circular

Date:

Circular to Membership

Equity-linked debt securities (''ELDS'') of _____ Corporation have been approved for Exchange [listing or trading pursuant to unlisted trading privileges] and will commence trading on [date]. The ELDS are debt securities where the amount payable at maturity is based on the then-current price of [the linked security].

—The ELDS will trade with the ticker symbol _____.

ELDS are securities that have certain unique characteristics, and investors should be afforded an explanation of such special characteristics and risks attendant to trading thereof, including:

—At maturity, holders of ELDS will receive [description of payment].

—Because the amount of principal returned when ELDS mature depends on the price of [the linked security], the possibility exists that an ELDS holder may lose some or all of the principal amount of his ELDS investment.

—ELDS will trade on the Equity Floor. ELDS will trade ''Flat'' (that is, without the payment of accrued interest) and in round lots of 100.

—ELDS are solely the obligation of [the issuer]. Holders of ELDS may look only to [the issuer] for payments of interest and principal, and not to [the issuer of the linked security].

—Both [the issuer and the issuer of the linked security] are listed on [insert appropriate markets] and are subject to the continuous reporting obligations of the Securities Exchange Act of 1934, as amended (the ''1934 Act''). Interested persons may obtain copies of reports, proxy statements and other materials filed by [the two issuers] pursuant to the 1934 Act at the offices of the Securities and Exchange Commission.

Before a member, member organization, or person associated with such member organization undertakes to recommend a transaction in the ELDS, such member or member organization should make a determination that such ELDS are suitable for such customer and the person making the recommendation should have a reasonable basis for believing, at the time of making the recommendation, that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks and the special characteristics of the recommended transaction and is financially able to bear the risks of the recommended transaction.

Any questions regarding the suitably of customer accounts should be directed to _____ at (312) 663–_____. Inquiries with respect to the ELDS themselves should be directed to _____ at (312) 663–_____.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange 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 CHX is proposing listing criteria to allow the Exchange to list hybrid debt securities and to trade hybrid debt securities pursuant to unlisted trading privileges. The Exchange refers to such debt securities as ''Equity Linked Debt Securities'' or ''ELDS.'' ELDS are the non-convertible debt of the issuing company where the value of the debt is based, at least in part, on the value of another company's common stock or other individual equity security. ELDS may pay periodic interest or may be issued as zero-coupon instruments. In addition, ELDS may or may not have a ceiling and/or floor on the amount of principal that may be returned at maturity of the instrument.

The Exchange believes that the proposed ELDS listing criteria are generally consistent with the ''Other Securities'' criteria currently found in Article XXVIII, Rule 13 of the CHX Rules and the Equity Linked Notes (''ELNs'') listing criteria used by the American Stock Exchange, Inc. (''Amex''). The Exchange based its proposed rules on the ELDS listing criteria currently used by the New York Stock Exchange, Inc. (''NYSE'').[4]

General ELDS Listing Requirements

The issuer of an ELDS proposed for listing on the Exchange must meet certain requirements. The issuer of the ELDS must either (a) meet general CHX listing standards; or, (b) be in good standing, if listed on the Exchange; or, (c) be an affiliate of a company listed on the Exchange whose listing status is in good standing.[5]

The ELDS issue itself is subject to a variety of listing requirements as well. The issue must: (1) consist of a least one million ELDS, (2) have at least 400 holders, (3) have an aggregate market value of at least $4 million, and (4) have a term of two to seven years (if the issuer is a non-U.S. company, the issue may not have a term of more than three years).

The proposal also includes criteria governing the equity security on which the value of the ELDS is based, several other miscellaneous requirements also imposed to ensure quality, and some further restrictions on ELDS whose underlying security is issued by a non-U.S. company. Specifically, with regard to value: (i) the issuer of each such security must be a reporting company with minimum market capitalizations and trading volumes, and (ii) each such security must be either listed on a national securities exchange or traded through the facility of a national securities association and be subject to last sale reporting.

The remaining quality assurance requirements ensure that: (a) the issuance of ELDS relating to any underlying U.S. security does not to

[4] The only difference between the proposed rule change and the NYSE ELDS rules is that the rules proposed by CHX provide for unlisted trading privileges. Telephone call between Patricia L. Levy, Senior Vice President and General Counsel, CHX, and Kelly A. McCormick, Attorney, Division of Market Regulation, SEC, on November 30, 1998.

[5] If the ELDS issuer is not listed on the Exchange, the ELDS issuer must meet the size and earnings requirements set forth in the Exchange's tier I or Tier II Listing Rules. In addition, the ELDS issuer must either have a minimum tangible net worth of $250 million or $150 million. If the ELDS issuer uses the $150 million standard, the original issue price of the ELDS, combined with all of the issuer's other ELDS listed on a national securities exchange or other wise publicly traded in the United States, may not be greater than 25 percent of the issuer's net worth at the time of issuance.

exceed five percent of the total outstanding shares of the underlying security; and (b) the issuance of ELDS relating to any underlying non-U.S. security or sponsored American Depository Receipt (''ADR'') does not exceed either two, three or five percent of the total worldwide outstanding shares of such security, depending on the amount of the worldwide trading volume in the security and related securities that occurs in the U.S. market during the six-month period preceding the date of (i) listing on the Exchange (for ELDS that are listed on the Exchange) or (ii) listing on the national securities exchange that is the primary U.S. market for such ELDS (if the ELDS are to be traded on the Exchange pursuant to unlisted trading privileges).

Additional Requirements for Non-U.S. Companies

Finally there are some additional requirements when the underlying security is a non-U.S. company (including a company that is traded in the United States through ADRs). First, there must be at least 2,000 holders of the security. In addition, one of the following three alternatives must apply: (1) the Exchange must have an effective comprehensive surveillance information sharing agreement with either (a) the primary exchange in the country where the security is primarily traded (for listed ELDS),[6] or, (b) the national securities exchange that is the primary U.S. market for such security (for ELDS traded pursuant to unlisted trading privileges); or (2) the Relative Trading Volume must be at least 50%;[7] or (3) during the six months preceding the listing of the ELDS on the Exchange (or for ELDS traded on the Exchange pursuant to unlisted trading privileges, preceding the listing of the ELDS on the primary U.S. market for such security), the underlying company must meet various trading volume standards. The trading volume standards require that (1) the combined trading volume of the security in the United States be at least 20 percent of the combined world-wide trading volume in the security and in related securities;[8] (2) the average daily trading volume for the security (or, if traded in the form of an ADR, the ADR overlying such security) in the U.S. market be 100,000 or more shares; and (3) the trading volume for the security (or, if traded in the form of an ADR, the ADR overlying such security) be at least 60,000 shares per day in the U.S. market on a majority of the trading days during the six-month period.

Trading Issues

The Exchange will generally treat ELDS as equity securities. Thus, for example, ELDS will be subject to equity margin treatment.

In addition, due to the unique nature of ELDS, prior to the commencement of trading of each new ELDS, the Exchange will distribute a circular to its members and member organizations alerting them to be unique characteristics of ELDS and providing guidance regarding their compliance responsibilities with respect to such securities. A form of this circular is set out in Interpretation and Policy .01 to Rule 26 of Article XXVIII.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act[9] in that it is designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any 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, Participating or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–98–26 and should be submitted by December 30, 1998.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has reviewed the CHX's proposed rule change[10] and believes for reasons set forth below, the proposal is consistent with the requirements of Section 6 of the Act[11] and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes the proposal is consistent with the requirements of Section 6(b)(5)[12] because the rule is designed to perfect the mechanism of a free and open market and to protect investors and the public interest. Specifically, the Commission believes that ELDS provide a new and innovative means of participating in the securities markets. In particular, the Commission believes that the increased availability of ELDS will permit investors to more closely approximate their desired investment objectives through, for example, shifting some of the opportunity for upside gain in return for additional income.[13]

ELDS are not leveraged instruments, however, their price will still be derived from and based upon the underlying linked security. Accordingly, the level of risk involved in the purchase or sale

[6] In the case of a sponsored ADR, the agreement must be the primary exchange in the home country where the security underlying the ADR is primarily traded.

[7] Relative Trading Volume is defined as the ratio of (i) the combined trading volume, on a share-equivalent basis, of the security and related securities (including ADRs overlying such security) in the United States and in any other market with which the Exchange (for ELDS that are listed on the Exchange), or with which any other national securities exchange that is the primary U.S. market for such ELDS (if the ELDS are to be traded on the Exchange pursuant to unlisted trading privileges) has in place an effective, comprehensive surveillance information sharing agreement to (ii) the world-wide trading volume in such securities.

[8] The securities considered in this regard include the security itself, any ADR overlying the security (adjusted on a share equivalent basis) and any other class of stock related to the underlying security.

[9] 15 U.S.C. 78f(b)(5).

[10] In reviewing this proposal, the Commission has considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(5).

[13] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of exchange trading for new products upon a finding that the introduction of the product is in the public interest. Such finding would be difficult with respect to a product that served no investment, hedging or other economic function, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

of an ELDS is similar to the risk involved in the purchase or sale of traditional common stock. Nonetheless, in considering the Amex's ELNs [14] proposal [15] and the NYSE's ELDS proposal,[16] the Commission had several specific concerns with this type of product (*i.e.*, (1) investor protection concerns, (2) dependence on the credit of the issuer of the instrument, (3) systemic concerns regarding position exposure of issuers with partially hedged positions or dynamically hedged positions, and (4) the impact on the market for the underlying linked security).[17] The Commission concluded, however, that the Amex and NYSE proposals adequately addressed each of these issues such that the Commission's regulatory concerns were adequately minimized.[18] Similarly, in this proposal, the CHX has proposed safeguards that address these concerns which the Commission finds to be equivalent to those approved for the trading of ELNs at the Amex and ELDS at the NYSE.

The Commission notes that the CHX proposal also provides for unlisted trading privileges for ELDS listed on other exchanges. The Commission believes that unlisted trading privileges for ELDS is also consistent with the Act because it removes impediments to and perfects the mechanism of a free and open market. Unlisted trading privileges allow for the trading of additional products at the CHX which are subject to listing standards that are equivalent to the CHX listing standards for ELDS. Accordingly, for the reasons stated herein, as well as in the Commission's ELNs approval for the Amex and the ELDS approval for the NYSE, the Commission finds that the CHX standards for listing and trading of ELDS are consistent with the Act and the listing and trading of ELDS is in the public interest.

Finally, the Exchange has requested, and the Commission agrees that, accelerated approval is appropriate in this instance. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice thereof in the **Federal Register** . The Commission finds that the proposal closely conforms to the proposals already approved by the Commission with respect to the listing and trading of ELNs on the Amex [19] and ELDS on the NYSE.[20] Accordingly, the CHX proposal presents no new regulatory issues. Moreover, both the NYSE and Amex proposals were subject to the full 21-day period, yet no comments were received by the Commission. Therefore, the Commission believes it is consistent with Sections 6(b)(5) [21] and 19(b)(2) [22] of the Act to approve the proposed rule change on an accelerated basis.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[23] that the proposed rule change (SR–CSE–98–02) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–M

[14] As noted earlier, ELNs, Equity Linked Term Notes are the same product, with the same terms and characteristics, as defined herein for ELDS.

[15] Exchange Act Release No. 32343 (May 20, 1993).

[16] Exchange Act Release No. 33468 (January 13, 1994).

[17] Release Nos. 34–32343 and 34–33468.

[18] Id.

[19] Release No. 34–32343.

[20] Release No. 34–33468.

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78s(b)(2).

[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40740; File No. SR–NSCC–98–10]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change Authorizing the Modification of NSCC's Collateral Management Service

December 3, 1998.

On July 22, 1998, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–NSCC–98–10) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on October 16, 1998.[2] For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

NSCC's Collateral Management Service (''CMS'') provides automated access to information on participants' clearing fund, margin, and other deposits at NSCC and other participating clearing entities.[3] The purpose of this rule change is to add an interactive messaging feature to CMS. Specifically, NSCC is modifying CMS to: (i) enable participating clearing entities and participants to send and receive messages regarding collateral on an automated basis through CMS; (ii) enable participants that elect to participate in CMS to request a withdrawal of excess collateral on a daily basis, including an intraday withdrawal of excess cash collateral; and (iii) address the movement of collateral based on CMS messages. The modifications primarily affect Rule 53 (Collateral Management Service) of NSCC's Rules and Procedures.

NSCC intends to implement the modifications to CMS upon approval of the proposed rule change. Other participating clearing entities will be able to make the CMS modifications relating to clearing fund and margin deposits available on a phased-in basis at a time determined by each clearing entity.[4]

CMS Message Processing

NSCC is modifying NSCC Rule 53 to enable NSCC, participating clearing entities, and participating participants to send and receive interactive messages regarding their respective CMS information (''CMS messages''). CMS messages include the following: (i) a request by NSCC or a participating clearing entity to a participant for additional collateral; (ii) a request by a participant to NSCC or to a participating clearing entity to return excess collateral; (iii) a request by a participant to NSCC or to a participating clearing entity to use excess cash collateral to satisfy a settlement deficit at the entity where there is excess cash collateral; (iv) a request by a participant to NSCC or to a participating clearing entity to substitute collateral; and (v) a request by a participant to NSCC or to a participating clearing entity to use excess cash collateral to satisfy a clearing fund or margin deficit at an entity other than where there is excess cash collateral.

NSCC, participating clearing entities, and participating participants will send and receive CMS messages on an automated basis by using CMS message screens. Generally, the CMS massage screens will contain fields to identify

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 40536 (October 8, 1998) 63 FR 55664.

[3] For a detailed description of CMS, refer to Securities Exchange Act Release No. 36091 (August 10, 1995) 60 FR 42931 [File No. SR–NSCC–95–06].

[4] Each participating clearing entity will need to review its rules and to file any necessary proposed rule changes under Section 19(b) before making available to its participants the ability to move and withdraw collateral.

the requesting entity, the entity or entities receiving the CMS message, the type of request, the request amount, the type of collateral, and the date of the request. CMS will transmit the request to the entity or entities identified in the request. All requests by a participant to NSCC and to participating clearing entities will require approval of the clearing entity.

NSCC is adding Procedure XVI to its rules and procedures to set forth the procedures for processing each of the five basic types of CMS messages. First, Procedure XVI provides that NSCC and participating clearing entities may submit a request for additional collateral to a participant through CMS.[5] The request will be transmitted to the participant identified in the request. Second, Procedure XVI provides that a participant may submit a request for the return of excess collateral to NSCC or to a participating clearing entity through CMS.[6] The requesting participant will receive a message from the clearing entity indicating the approval or rejection of the request and in the case of a rejection the reason(s) for the rejection. Third, Procedure XVI provides that a participant may submit a request to NSCC or to a participating clearing entity to use excess cash collateral to satisfy a settlement deficit at the clearing entity where there is excess cash collateral.[7] The request will be transmitted to the clearing entity identified in the request for approval or rejection. The requesting participant will receive a message indicating the approval or rejection of the request and in the case of a rejection the reason(s) for the rejection.

Fourth, Procedure XVI provides that a participant may submit a request to NSCC or to a participating clearing entity to substitute collateral.[8] The request will be transmitted to the clearing entity identified in the request for approval or rejection. The requesting participant will receive a message indicating the approval or rejection of the request and in the case of a rejection the reason(s) for the rejection.

Fifth, Procedure XVI provides that a participant may submit a request to use excess cash collateral at one participating clearing entity or NSCC to satisfy a clearing fund or margin deficit at another participating clearing entity or NSCC.[9] The request will be transmitted to both clearing entities identified in the request for approval or rejection. The requesting participant will receive a message from each clearing entity indicating the approval or rejection of the request and in the case of a rejection the reason(s) for the rejection.

Procedure XVI also provides that requests must be submitted by such times on each processing day as may be established by NSCC and participating clearing entities. A request by a participant to NSCC or to a participating clearing entity that is not fully approved on the day that it is submitted will not be carried forward to the next processing day. However, CMS provides for ''today for tomorrow'' requests that will pend and will be incorporated into the next day's processing if so designated.

Withdrawal of Excess Collateral on a Daily Basis

The rule change also modifies Rule 53 and makes conforming changes to other rules and procedures to allow participating participants to request a withdrawal of excess collateral on a daily basis, including an intraday withdrawal of excess cash collateral. This modification is an exception to NSCC's general rule that permits a participant to request the return of excess collateral no more frequently than monthly and is also an exception to the general rule that permits certain participants on surveillance status to request the return of excess collateral no more frequently than quarterly. Although the rule change allows participants to make daily requests for return of excess collateral, NSCC still has discretion to deny such requests.

Movement of Collateral Based on CMS Messages

The rule change modifies Rule 53 to address the movement of collateral based on CMS messages. The actual movement of collateral based on a CMS message and will be made between the appropriate clearing entity and the participant pursuant to the rules and procedures of the appropriate clearing entity. However, under the rule change the movement of collateral based on a participant's request to use excess cash collateral at one clearing entity to satisfy a clearing fund or margin deficit at another clearing entity will be made directly between the clearing entities daily on a bilateral net basis or as otherwise may be determined by the clearing entities.

Currently, an agreement authorizing use of data for CMS (''CMS Agreement'') addresses NSCC's authorization from participating clearing entities to collect and provide clearing fund and margin requirement and deposit information. Under an amendment to the CMS Agreement, NSCC and participating clearing entities will agree to make payments in accordance with their respective rules and procedures based on approved participant requests to use excess cash collateral at one clearing entity to satisfy a clearing fund or margin deficit at another clearing entity daily on a bilateral net basis or as otherwise may be determined by the clearing entities.[10] From the perspective of a participant, excess cash collateral will be treated as moved at the time both clearing entities approve the participant's request or at such other time as the clearing entities may mutually agree.

The movement of excess cash collateral from NSCC to an NSCC participant based on a CMS message will be included in NSCC's money settlement process unless the participant requests an intraday wire transfer of funds. The rule change also makes a technical modification to Section 6 of Rule 53 to add references to CMS messages.

II. Discussion

Section 17A(b)(3)(F)[11] of the Act requires that the rules of a clearing agency be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of

[5] The request must include the identity of the requesting clearing entity, the identity of the participant, the total amount of the request, the type of collateral (*i.e.*, cash, securities, and/or letters of credit), the date of the request, and such other information as may be required or permitted.

[6] The request must include the identity of the requesting participant, the identity of the appropriate clearing entity, the total amount of the request, the type of collateral (*i.e.*, cash, securities, and/or letters of credit), the date of the request, and such other information as may be required or permitted.

[7] The request must include the identity of the requesting participant, the identity of the appropriate clearing entity, the total amount of the request, the date of the request, and such other information as may be required or permitted.

[8] The request must include the identity of the requesting participant, the identity of the appropriate clearing entity, the total amount and type of the collateral (*i.e.*, cash, securities, and/or letters of credit) to be returned to the participant, the total amount and type of collateral (*i.e.*, cash, securities, and/or letters of credit) to be substituted by the participant, the date of the request, and such other information as may be required or permitted.

[9] The request must include the identity of the requesting participant, the identity of the clearing entity from which the excess cash collateral is to be sent, the identity of the clearing entity to which the excess cash collateral is to be sent, the total amount of the request, the date of the request, and such other information as may be required or permitted.

[10] Participating clearing entities other than NSCC will be required to execute the amendment to the CMS Agreement when they begin to phase in the CMS modifications. Participating clearing entities may also need to file proposed rule changes in connection with executing the amendment to the CMS Agreement.

[11] 15 U.S.C. 78q–1(b) (3) (F).

securities transactions. The Commission believes the NSCC's new interactive messaging feature should increase the efficiency of collateral movements in and among clearing entities by establishing a standardized and automated system to request the movement or withdrawal of collateral. Further, the CMS modifications will give NSCC and participants information regarding participants' requests for movement or withdrawal of collateral which should help participating clearing entities to better monitor their participants' collateral positions. Therefore, the Commission believes that the change is consistent with NSCC's obligations under Section 17A(b)(3)(F).

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–98–10) be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32668 Filed 12–8–98; 8:45 am]

BILLING CODE 8010–01–M

[12] 17 CFR 200.30–3(a) (12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40731; File No. SR–NYSE–98–39]

Self-Regulatory Organization; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., To Increase the Administration Fee Charged for the Supervisory Analyst Examination (Series 16)

December 1, 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 November 13, 1998, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the Exchange. 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 NYSE proposes to increase the fee for the Supervisory Analyst Examination (Series 16) from $60 to $200 per administration effective December 1, 1998.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rule 472(b) (''Communications With The Public'') requires that research reports be prepared or approved by a supervisory analyst acceptable to the Exchange under the provisions of Rule 344 (''Supervisory Analysts''). The Supervisory Analyst Examination (''Series 16'') is the qualification examination that a person must pass before he or she can work as a Supervisory Analyst for a member or member organization. The Exam previously was administered in paper and pencil format and the fee charged has been $60 per candidate. Recently, the Exchange began administration of this examination in electronic format at Sylvan Test Centers. These test centers also administer other industry examinations.

The Exchange proposes to increase the administration fee for the Series 16 Examination to $200 per exam administration effective December 1, 1998. The increased fee is necessary to offset expenses incurred in developing, updating and administering the exam. Additionally, the fee will be consistent with the fees charged for other exams.

2. Statutory Basis

The proposed rule change is consistent with the requirement under Section 6(b)(4) of the Act[3] that an Exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[4] and subparagraph (e)(2) of Rule 19b-4 thereunder.[5] 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.[6]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b)(4).

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(e)(2).

[6] In reviewing this proposal, the Commission has considered its potential impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–98–39 and should be submitted by December 30, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

[FR Doc. 98–32602 Filed 12–8–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40721; File No. SR–NYSE–98–35]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Specifications and Content Outline for the Trading Assistant Qualification Examination (Series 25)

November 30, 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 November 10, 1998, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has filed the Content Outline and Specifications for the Trading Assistant Qualification Examination (''Series 25 Content Outline'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exhange Rule 35 dictates the terms under which an employee of a member or member organization may be admitted to the Exchange Trading Floor. Currently, the registration process for Floor employees *i.e.*, Post Clerks and Booth Clerks, also known as Trading Assistants, consists of submission of a completed Form U–4 (''Uniform Application for Securities Industry Registration or Transfer'') and fingerprints. The Exchange has proposed amendments to Rule 35 to require Trading Assistants to, in addition to the current requirements, take and pass appropriate qualification examinations and meet appropriate training requirement.[3]

The Series 25 and Series 25 Content Outline were developed by the Exchange, in conjunction with a Committee of Exchange Members and Trading Assistants, in order to qualify Floor Trading Assistants pursuant to proposed amendments to Rule 35[4] The Series 25 will ensure that Trading Assistants have the basic knowledge, skills, and abilities necessary to perform the functions and carry out the responsibilities of a Trading Assistant. The Series 25 Content Outline, which may be examined at the places specified in Item IV below, details the coverage of the examination.

The requirement to take and pass the Series 25 examination in order to qualify as a Trading Assistant will apply to all current and prospective Trading Assistants. A proposed new interpretation to Rule 35 will established that new Trading Assistants will be required to undergo three months of training (including on-the-job and classroom instruction) prior to taking the examination.[5] New Trading Assistants will not be permitted to perform their functions without supervision until passing the examination. Current Trading Assistants would have one year from implementation of the qualification requirement to pass the examination.

2. Statutory Basis

The Exchange believes the statutory basis for the Series 25 Examination lies in Section 6(c)(3)(B) of the Act.[6] Under that Section, the Exchange has the responsibility to prescribe standards of training, experience and competence for persons associated with Exchange members and member organizations. Pursuant to this statutory obligation, the Exchange has developed examinations that are administered to establish that persons associated with Exchange members and member organizations have attained specified levels of competence and knowledge.

In addition, pursuant to Section 6(c)(3)(B) of the Act,[7] the Exchange may bar a natural person from becoming a member or person associated with a member, if such natural person does not meet such standards of training, experience and competence as are prescribed by the rules of the Exchange. Pursuant to this statutory obligation, the Exchange believes it has developed an examination that will be administered to confirm that Trading Assistants have attained specified levels of competence and knowledge.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition 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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On October 22, 1998, the Exchange filed with the Commission SR–NYSE–98–36 which proposes to amend Rule 35 to provide for the additional registration requirements for Trading Assistants. Securities Exchange Act Release No. 40720 (November 30, 1998).

[4] Id.

[5] Id.

[6] 15 U.S.C. 78f(c)(3)(B).

[7] Id.

(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 NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. NYSE–98–35 and should be submitted by December 30, 1998.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32603 Filed 12–8–98; 8:45 am]

BILLING CODE 8010–01–M

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40722; File No. SR–NYSE–97–09]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Relating to Specialists' Handling of Percentage Orders

November 30, 1998.

I. Introduction

On March 25, 1997, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Rule 123A.30, relating to specialists' handling of percentage orders.

The proposed rule change was published for comment in the **Federal Register** on May 21, 1997.[3] No comments were received on the proposal. On June 15, 1998, the Exchange submitted Amendment No. 1 to the proposed rule change.[4] This order approves the proposed rule change and approves Amendment No. 1 to the proposed rule change on an accelerated basis.

II. Background and Description of the Proposal

A. Background

A percentage order is a limited price order to buy or sell 50% of the volume of a specified stock after its entry. A percentage order is essentially a memorandum entry left with a specialist which becomes a ''live'' order capable of execution in one of two ways: (i) all or part of the order can be ''elected'' as a limit order on the specialist's book based on trades in the market; or (ii) all or part of the order can be ''converted'' into a limit order to make a bid or offer or to participate directly in a trade.

1. The Election Process

Under the election process, as trades occur at the percentage order's limit price or better, an equal number of shares of the percentage order are ''elected'' and become a limit order on the specialist's book. This limit order takes its place behind other limit orders on the specialist's book at the same price. The percentage order then is reduced by the number of elected shares until the entire order has been satisfied.

Currently, there are four types of percentage orders; last sale percentage orders, straight limit percentage orders,[5] buy minus-sell percentage orders,[6] and immediate execution or cancel election percentage orders.[7] The Exchange has indicated that most percentage orders are entered as last sale percentage orders, meaning that they are elected to the book at the price of the electing sale and may be executed at that price, or at a better price.[8]

2. The Conversion Process

The second way that a percentage order can be activated into a limit order is through the conversion process. Most percentage orders contain the additional instruction, ''CAP–D.'' ''CAP'' is an acronym meaning ''convert and parity,'' which instructs the specialist that he or she may convert all or a portion of the order into a limit order, and allows the specialist to be on parity with the converted percentage order, either to participate directly in a trade or to make a bid or offer (''bettering the market''). The ''D'' notation instructs the specialist that, under certain circumstances, the order may be converted to participate in destabilizing transactions, as well as stabilizing transactions.

The Exchange has stated that, as a practical matter, it views CAP–D orders as a necessary adjunct to the standard election procedures because they allow the specialist greater flexibility to match the order with other buying and selling interest in the market. CAP–D orders are subject to a number of restrictions intended to minimize the specialist's discretion in handling such orders.[9] Specifically, under the conversion process, the specialist may convert a percentage order into a ''live'' limit order on a destabilizing tick only where: (i) the transaction for which the order is being converted is for 10,000 shares or more; and (ii) the price at which the converted percentage order is to be

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 38630 (May 13, 1997), 62 FR 27822.

[4] *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Michael Walinskas, Deputy Associate Director, Division of Market Regulation, Commission, dated June 12, 1998 (''Amendment No. 1''). In Amendment No. 1, the NYSE clarifies that its proposal to add the phrase ''or converted'' to the last paragraph of NYSE Rule 123A.30 would not change the existing rules governing the conversion of percentage orders. Instead, the Exchange believes that the issue of whether an executed percentage order was ''elected'' or ''converted'' to a limit order is irrelevant to its proposal to allow such execution to trigger the election of another percentage order on the opposite side of the market.

[5] A straight limit percentage order carries a limit price equal to the percentage order limit price.

[6] A buy minus-sell plus percentage order operates in the same fashion as a straight limit percentage order, except that it places the additional requirement that elected portions of buy (sell) percentage orders be elected at a price on minus or zero-minus ticks (plus or zero plus ticks) from the previous sale.

[7] An immediate execution or cancel election percentage order instructs the specialist to execute the elected portion of the percentage order immediately in whole or in part at the price of the electing transactions. The remaining unexecuted elected portion of the percentage order, if any, reverts back to an unelected percentage order, subject to subsequent election or conversion. *See* Securities Exchange Act Release No. 39837 (April 8, 1998) 63 FR 18244 (April 14, 1998) (order approving File No. SR–NYSE–97–38).

[8] The various types of percentage orders differ only in terms of execution, and not the process by which they are elected. *See* notes 5–7 *supra*.

[9] *See* NYSE Rule 123A.30; Securities Exchange Act Release No. 24505 (May 22, 1987) 52 FR 20484 (June 1, 1987) (order approving File No. SR–NYSE–85–1 to permit conversion of percentage orders on destabilizing ticks under certain circumstances).

executed is no more than ¼ point away from the last sale price; provided, however, that this price parameter may be modified, in appropriate cases, with the prior approval of a Floor Official and the written consent of the broker who entered the order.[10]

B. Description of the Proposal

Currently, NYSE Rule 123A.30 provides that percentage orders shall not be elected by any portion of volume which results from the execution of a previously elected portion of a percentage order. According to the Exchange, the intent of this restriction is to prevent ''chain reaction'' executions of percentage orders whereby executions of elected portions of percentage orders trigger additional elections. This result would be contrary to the objectives of most investors entering percentage orders, who generally want to ''go along'' with the overall trend of the market as reflected by other market interest, without necessarily leading that trend.

As currently interpreted, NYSE Rule 123A.30 does not distinguish between the election or conversion of percentage orders on the same side of the market and the election or conversion of percentage orders on opposite sides of the market. The Exchange believes that the restriction should be applied only to percentage orders on the same side of the market, as ''same side'' orders are the ones to be executed along with the market trend.[11]

The Exchange is proposing to amend NYSE Rule 123A.30 to provide that percentage orders held by a specialist may be elected by the execution of a previously elected or converted [12] portion of a percentage order that is on the opposite side of the market.[13]

The Exchange also is proposing to amend NYSE Rule 123A.30 to permit the specialist to convert a percentage order on a destabilizing tick, as otherwise permitted by the rule, when the transaction is 10,000 shares or more or represents a quantity of stock having a market value of $500,000 or more (whichever is less). The Exchange notes that this amendment will conform the size of permitted transactions to the definition of a ''block'' in NYSE Rule 97.

III. Discussion

The Commission has considered carefully whether the NYSE's proposal is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[14] Specifically, the Commission has considered whether the proposal is consistent with the requirements set forth in Sections 6(b) and 11(b) of the Act.[15] In reviewing previous proposals involving percentage orders, the Commission has been concerned whether such orders provide the specialist with ''discretion'' in violation of Section 11(b) of the Act.[16] Section 11(b) was designed, in part, to address potential conflicts of interest that may arise as a result of a specialist's dual role as agent and principal in executing stock transactions. In particular, Congress intended to prevent specialists from unduly influencing market trends through their knowledge of market interest from the specialist book and their handling of discretionary agency orders.[17] The Commission has interpreted this section to mean that all orders other than market or limit orders are discretionary and therefore cannot be accepted by a specialist.[18]

The Commission previously has determined that it is appropriate to treat percentage orders as equivalent to limit orders.[19] With regard to the conversion process in particular, while acknowledging that it permits specialists to employ their judgment to a certain extent, the Commission believed that the requirements imposed on the specialist when converting a percentage order for execution or quotation purposes provided sufficiently stringent guidelines to ensure that the specialist only will implement the conversion provisions in a manner consistent with his or her market making obligations and Section 11(b).[20]

Furthermore, the Commission previously has determined that the NYSE's percentage order rules are consistent with the standards set forth under Section 6(b)(5) of the Act.[21] This section requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices. The Commission determined that the NYSE's percentage order rules contain various limiting and protective provisions, to ensure that such rules will not increase the possibility of specialist abuse of the market.

As discussed in greater detail below, the Commission finds that the proposed rule change, in allowing a specialist to elect a percentage order based on the execution of a previously elected or converted percentage order on the opposite side of the market and modifying the restrictions pertaining to the conversion of a percentage order on a destabilizing tick, does not adversely impact the protective scheme that has been incorporated into the percentage order rules. Accordingly, the Commission finds that the proposed rule change is consistent with Sections 6(b)(5) and 11(b) of the Act [22] in that it neither greatly increases specialists' ability to engage in fraudulent and manipulative practices nor allots discretion to specialists in their handling of percentage orders.

A. Proposed Modification to the Election Process

Currently, a percentage order may not be elected based on the execution of a previously elected or converted percentage order. For purposes of this prohibition, the current rules do not distinguish between percentage orders on the same side of the market and those on opposite sides of the market. The Exchange's proposal provides that percentage orders held by a specialist may be elected by the execution of a previously elected or converted portion of a percentage order that is on the opposite side of the market.

[10] For a more detailed description of the procedures under which a percentage order may be converted on a destabilizing tick, *see* Securities Exchange Act Release No. 24505, *supra* note 9.

[11] For example, buy percentage orders would be elected and executed along with other buying interest, and sell percentage orders would be elected and executed along with other selling interest.

[12] *See* Amendment No. 1, *supra* note 4.

[13] For example, assume that the market is 20 to 20¼, 2,000 by 2,000, with the 2,000 share offer representing 2,000 ''elected'' or ''converted'' shares of a percentage order to sell 10,000 shares. The specialist then receives a last sale percentage order to buy 10,000 shares at a limit price of 20⅝ after which he receives through SuperDOT an order to buy 1,000 shares at the market. After bidding 20 1/16 on behalf of the SuperDOT order, the specialist executes that order against the 2,000 share offer at 20¼. Under the current rule, no portion of the buy percentage order would be elected, and no additional portion of the sell percentage order would be elected. Under the proposed rule change, 1,000 shares of the buy percentage order would be elected at 20¼, and would then trade the remaining 1,000 share balance of the offer at 20¼. No portion of the sell percentage order would be elected since the execution of the remaining 1,000 share sell balance would result from the execution of a previously elected or converted percentage order on the same side of the market.

[14] 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. 78c(f).

[15] 15 U.S.C. 78f(b) and 78k(b).

[16] 15 U.S.C. 78k(b).

[17] *See* H. Rep. No. 1383, 73d Cong., 2d Sess. 22; S. Rep. 792, 73d Cong., 2d Sess. 18 (1934).

[18] *See, e.g.,* SEC, Special Study of the Securities Markets, H.R. Doc. No. 95, 88th Cong., 1st Sess., Part 2, 72 (1963) (''Special Study'') (noting that ''Section 11(b) . . . prohibits, without exception, a specialist's effecting any transaction except upon a market or limit order'').

[19] *See* Securities Exchange Act Release No. 24505, *supra* note 9.

[20] 15 U.S.C. 78k(b).

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78f(b)(5) and 78k(b).

The Commission believes that it is consistent with the Act to allow the election of a percentage order based on the execution of a percentage order on the opposite side of the market. The Commission believes that the proposed rule change is consistent with the underlying rationale for the percentage order rule; namely, to allow larger-sized orders to trade along with the trend of the market, rather than lead that trend. For example, a percentage order cannot elect itself by its execution. Instead, independent interest on the same side of the market is needed to trigger an election. In addition, the Commission anticipates that by allowing the execution of percentage orders to trigger the election of percentage orders on the opposite side of the market, the proposal should increase the likelihood that percentage orders held by the specialist will be elected as limit orders and ultimately, executed.

Moreover, the Commission finds that permitting the election of a percentage order based on the execution of a previously elected or converted percentage order on the other side of the market is consistent with the Act in that it does not provide discretion to specialists in the handling of percentage orders. Instead, the Commission notes that previously executed percentage orders, regardless of whether initially elected or converted, will trigger the election of percentage orders on the other side of the market. The specialist is not provided any discretion over the process of electing percentage orders on the other side of the market, once a previously elected or converted percentage order has been executed, in accordance with the Exchange's rules.

Finally, the Commission notes that the Exchange's rules will continue to prohibit the election of percentage orders based on the execution of percentage orders on the same side of the market. The Commission believes that this continued prohibition, which will prevent same side percentage orders held by the specialist from being elected by the execution of percentage orders, is appropriate.

B. Proposed Modification to the Conversion Process

The Exchange's proposal also permits the specialist to convert a percentage order on a destabilizing tick, as otherwise permitted by the rule, when the transaction is 10,000 shares or more or represents a quantity of stock having a market value of $500,000 or more (whichever is less). NYSE Rule 123A.30 currently provides that the specialist may convert a percentage order on a destabilizing tick only where: (i) the transaction for which the order is being converted is for 10,000 shares or more; and (ii) the price at which the converted percentage order is to be executed is no more than ¼ point away from the last sale price; provided, however, that this price parameter may be modified, in appropriate cases, with the prior approval of a Floor Official and the written consent of the broker who entered the order.

The Commission notes that by allowing a specialist to convert an order on a destabilizing tick when the transaction being converted is for 10,000 shares or more or represents a quantity of stock having a market value of $500,000 or more, whichever is less, the proposed change will make the size of permitted transactions consistent with the definition of a ''block'' transaction in NYSE Rule 97. The Commission agrees that the proposed amendment, which will liberalize the requirements of NYSE Rule 123A.30, should facilitate conversion of percentage orders in stocks where the size of the trade has the appropriate market value to qualify as a block transaction, but may not have a share size of 10,000 or more. The Commission notes that the conversion procedures were intended to allow percentage orders to participate immediately with large-sized contra-side orders entering the market.[23] Previously, percentage orders were not eligible for execution until an electing transaction had occurred. As a result, all or part of a large percentage order was elected for execution in a large-size trade's ''after-market,'' where execution of the elected portion could disrupt price continuity.[24] Therefore, the Commission believes that amending the conversion rules to parallel the definition of a block transaction in NYSE Rule 97 will align the rules more closely with the original intent of the conversion procedures.

While the proposal will afford specialists greater opportunity to convert percentage orders on a destabilizing tick, the Commission believes that existing requirements imposed on the specialist when converting percentage orders for execution or quotation purposes are sufficiently restrictive to ensure that the specialist will act in a manner consistent with his market making obligations and Section 11(b) of the Act.[25] In addition, the Commission believes that the limiting and protective provisions incorporated into the Exchange's conversion procedures should ensure that the proposal will not increase the likelihood of fraudulent and manipulative activities by specialists. Therefore, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act.[26]

The Commission finds good cause for approving proposed Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. In Amendment No. 1, the NYSE attempts to clarify its proposal, with respect to the effect of the execution of percentage orders previously converted, in response to questions raised by Commission staff. As the NYSE's clarification does not in any way modify its original proposal, the Commission believes that Amendment No. 1 raises no novel issues of regulatory concern. Accordingly, the Commission believes that it is consistent with Section 6(b)(5) of the Act[27] to approve Amendment No. 1 to the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether Amendment No. 1 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 Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of all such filings also will be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–97–09 and should be submitted by December 30, 1998.

[23] *See* Securities Exchange Act Release No. 21704 (February 1, 1985) 50 FR 5834 (February 12, 1985) (noticing File No. SR–NYSE–85–1).

[24] For example, if the sale of a block of stock results in a price decline, the subsequent execution of a large percentage buy order elected by the execution of that block transaction could drive the price up again. *Id.*

[25] 15 U.S.C. 78k(b).

[26] 15 U.S.C. 78f(b)(5).

[27] 15 U.S.C. 78f(b)(5).

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[28] that the proposed rule change (SR–NYSE–97–09), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32604 Filed 12–8–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40720; File No. SR–NYSE–98–36]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. to Amend Rule 35 (''Floor Employees To Be Registered'') and Adopt a New Interpretation to Rule 35

November 30, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] (''Act'') and Rule 19b–4 thereunder,[2] notice is hereby given that on October 22, 1998, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. 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 proposed rule change consists of an amendment to Exchange Rule 35 (''Floor Employees to be Registered'') and a new interpretation with respect to the administration of proposed amended Rule 35. The text of the proposed rule is as follows. Additions are *italicized;* deletions are [bracketed].

Proposed Amendments to Rule 35

Floor Employees To Be Registered

Rule 35. No employee of a member or member organization shall be admitted to the Floor unless he is registered with, *qualified by* and approved by the Exchange, and upon compliance of both the employer and employee with such requirements as the Exchange may determine.

• • • Supplementary Material

.10–.50 No Change

.60 Qualifications for Registration—Unless otherwise determined by the Exchange, each candidate for registration shall qualify by meeting the training requirements and by passing applicable qualification examination(s) as prescribed by the Exchange.

[.60] *.70* No Change in Text

Proposed New Interpretation to Rule 35

Rule 35—Floor Employees to be Registered

/01 Unless otherwise determined by the Exchange, all Floor employees of members or member organizations (i.e., Trading Assistants) shall pass the Trading Assistant Qualification Examination (''Series 25'').

New Trading Assistant candidates must complete three months of training, including on-the-job and classroom training, as prescribed by the Exchange, prior to taking the Series 25 Examination. During the three month training period, the Trading Assistant candidate may perform the functions and duties of a Trading Assistant provided that the candidate is properly supervised. However, a new Trading Assistant candidate must complete required training and pass the Series 25 Examination before functioning as an ''unsupervised'' Trading Assistant (i.e., functioning without the specialized supervision required during the training period).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Prosed Rule Change

1. Purpose

The purpose of the rule change is to revise Rule 35 to require Floor employees of members and member organizations to satisfy prescribed training and qualification examination requirements before being admitted to the Exchange Trading Floor. The proposed rule change will also adopt a new interpretation to Rule 35 to implement the qualification examination requirements for Floor Employees.

Exchange Rule 35 dictates the terms under which an employee of a member or member organization may be admitted to the Exchange Trading Floor. Currently, the registration process for such Floor employees *i.e.,* Post Clerks and Booth Clerks, also known as Trading Assistants, consists of submission to the Exchange of a completed Form U–4 (''Uniform Application for Securities Industry Registration or Transfer'') and the candidate's fingerprints. Under the proposed amendments to Rule 35, these Trading Assistants, will have to be qualified by taking and passing appropriate qualification examination(s) and by meeting prescribed training requirements.

In order to qualify Trading Assistants, the Exchange, in conjunction with a committee of Exchange Members and Trading Assistants, developed a new qualification examination, the Trading Assistant Qualification Examination (''Series 25 Examination''). The Series 25 Examination will ensue that Trading Assistants have the basic knowledge, skills and abilities necessary to perform the functions and carry out the responsibilities of a Trading Assistant. The Series 25 Examination itself is the subject of a separate filing.[3]

The requirement to take and pass the Series 25 examination in order to qualify as a Trading Assistant will apply to all current and prospective Trading Assistants. The proposed new interpretation to Rule 35 will establish that new Trading Assistants will be required to undergo three months of training (including on-the-job and prescribed classroom instruction provided by the Exchange) prior to taking the examination. New Trading Assistants will not be permitted to perform their functions without appropriate supervision until passing the examination. Current Trading Assistants would have one year from implementation of the qualification requirement to pass the examination and do not have to complete classroom training. If a current Trading Assistant fails the Series 25 examination twice, however, he or she must complete classroom training before retaking the examination. The NYSE intends to publish the new interpretation as an Interpretation Memorandum for inclusion in the Exchange's *Interpretation Handbook.*

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(c)(3)(B) of the Act.[4] Under that Section, it is the Exchange's responsibility to prescribe standards of training, experience and

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[28] 15 U.S.C. 78s(b)(2).

[29] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 40721 (November 30, 1998).

[4] 15 U.S.C. 78f(c)(3)(B)

competence for persons associated with Exchange members and member organizations.

In addition, under Section 6(c)(3)(B) of the Act,[5] the Exchange may bar a natural person from becoming a member or person associated with a member, if such natural person does not meet such standards of training, experience and competence as are prescribed by the rules of the Exchange. Pursuant to this statutory obligation, the Exchange has developed an examination that will be administered to establish that Trading Assistants have attained specified levels of competence and knowledge.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, 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 Room. Copies of the filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the File No. SR–NYSE–98–36 and should be submitted by December 30, 1998.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[6]

Margater H. McFarland,

Deputy Secretary.

[FR Doc. 98–32605 Filed 12–8–98; 8:45 am]

BILLING CODE 8010–01–M

[5] Id.

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40739; File No. SR–PCX–98–56]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to ASAP Members' Access to OptiMark

December 2, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] notice is hereby given that on November 6, 1998, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by PCX.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX is proposing to change PCX Rule 1.14(a) to reflect that Members with Automated System Access Privileges (''ASAP'') shall be entitled to access OptiMark.[3] Below is the text of the proposed rule change. Proposed new language is in *italics*.

* * * * *

Electronic Access Membership

¶ 3085 ''Automated System Access Privileges (ASAP)''

Rule 1.14(a). No Change.

(1)–(2) No Change.

(3) The ASAP Member shall be entitled to access to P/COAST, POETS, *OptiMark,* and any other systems approved by the Board of Governors;

(4)–(7) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCX 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. PCX 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

PCX proposes to amend PCX Rule 1.14(a)(3) to add OptiMark to the list of systems approved for ASAP Members' access. The Exchange proposes to make this change to Rule 1.14(a)(3) to codify that ASAP Members are entitled to access OptiMark.

2. Statutory Basis

PCX believes the proposed rule change is consistent with Section 6(b)[4] of the Act, in general, and furthers the objectives of Section 6(b)(5),[5] in particular, because it is designed to promote just and equitable principles of trade, and to protect investors and the public interest.

[1] 15 U.S.C. 78s(b)(1).

[2] Amendment No. 1 was received on November 27, 1998, the substance of which is incorporated into this notice. Letter from Robert Pacileo, Senior Attorney, Regulatory Policy, PCX, to Michael Walinskas, Deputy Director, Division of Market Regulation, Commission, dated November 25, 1998.

[3] The OptiMark System is a computerized screen-based trading service intended for use by PCX members and their customers to provide automatic order formulation, matching, and execution capabilities in the equity securities listed or traded on the Exchange. The OptiMark System is intended to be used in addition to the Exchange's traditional floor facilities to buy and sell securities on the PCX by allowing PCX members and their customers to submit ranges of trading interest anonymously from their computer terminals. The OptiMark System would then identify specific orders capable of execution and all orders matched by the system would be automatically executed on the Exchange. *See* Exchange Act Release No. 39086 (September 17, 1997), 62 FR 50036 (September 24, 1997).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition 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

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This proposed rule filing has been filed by the Exchange as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [6] and subparagraph (e)(6) of Rule 19b–4 thereunder.[7] Consequently, because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative until January 2, 1998, more than 30 days from November 6, 1998, the date on which it was filed, the Commission waived the Rule 19b–4(e)(6)(iii) written notice requirement, upon the request of PCX.[8]

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, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of PCX.

All submissions should refer to File No. SR–PCX–98–56 and should be submitted by December 30, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32665 Filed 12–8–98; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(e)(6).

[8] *See* Amendment No. 1.

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40734; File No. SR–PCX–98–55]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Pacific Exchange, Inc. Relating to Crossed Markets Adjustments

December 1, 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 November 5, 1998, the Pacific Exchange, Inc. ''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On November 30, 1998, the PCX submitted to the Commission an amendment to the proposed rule change.[3] 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 PCX is proposing to clarify its rules on the automatic execution of option orders when the PCX market and the market of a competing exchange are crossed or locked (*i.e.,* the bid disseminated through the facilities of one exchange is higher than or equal to the offer disseminated through the facilities of another exchange). The change is intended to make consistent the Exchange's rules on the handling of electronic orders in such circumstances. The text of the proposed rule change follows. Additions to the proposed rule are in *italics;* deletions are in [brackets].

Text of the Proposed Rule Change

¶ 5231 Automatic Execution System

Rule 6.87(a)–(c)—No Change.

(d) Auto-Ex NBBO. The Options Floor Trading *C*[c]ommittee (''OFTC'') may designate electronic orders in an option issue to receive automatic executions at prices reflecting the national best bid or offer (''NBBO''), provided that the OFTC may designate, for an option issue, that an order will default for manual representation in the trading crowd if[: (1)] the order would be executed at a price that is more than one trading increment away from the PCX market price[; or (2) the NBBO is crossed or locked].

(e) Crossed or Locked Markets. The OFTC may designate, for an option issue, that an order will default for manual representation in the trading crowd if the NBBO is crossed or locked.

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 PCX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On September 8, 1998, the Commission approved a PCX rule change regarding the automatic execution of option orders.[4] The rule change provides that the Exchange's Options Floor Trading Committee (''OFTC'') may designate electronic orders in an option issue to receive automatic executions at prices reflecting the National Best Bid or Offer

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposed rule change was originally filed pursuant to Section 19(b)(3)(A)(ii) of the Act. The amendment converted the proposed rule change to a filing pursuant to Section 19(b)(2) of the Act. Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX to Kelly McCormick, Attorney, Division of Market Regulation, SEC, dated November 27, 1998 (''Amendment No. 1'').

[4] Exchange Act Release No. 40412 (September 8, 1998), 63 FR 49626 (September 16, 1998) (SR–PCX–98–27).

(''NBBO'').[5] It further provides that the OFTC may designate, for an option issue, that if the NBBO is crossed (*e.g.*, 6⅛ bid, 6 asked) or locked (*e.g.*, 6 bid, 6 asked), then customer orders would exit the automatic execution system of the Exchange and default for Floor Broker representation in the trading crowd.[6]

After the Commission approved File No. SR–PCX–98–27, the PCX has become aware that PCX Rule 6.87(d), the rule that the proposal changed, could imply that the OFTC can designate an option issue for Floor Broker representation in crossed and locked markets only if the issue is eligible to receive automatic execution at the NBBO. The Exchange, however, intended to allow the OFTC to designate any issue for Floor Broker representation in crossed and locked markets. Accordingly, the Exchange is now proposing to modify Rule 6.87 to clarify that the OFTC may designate, for any option issue, that if the NBBO is crossed or locked, then customer orders will default for Floor Broker representation in the trading crowd regardless of whether the Exchange's Auto-Ex system is set to execute orders at prices reflecting the NBBO.

The Exchange is planning to implement a systems change to cover the potential for Floor Broker representation of option orders during crossed or locked markets. However, before effecting that change, the Exchange has determined to file this proposal to clarify the Exchange's procedure on the handling of option orders when the NBBO is crossed or locked. Accordingly, upon approval of this proposal, the Exchange will be in a position to effect the appropriate systems changes as quickly as possible.

As with PCX–98–27, the Exchange believes that its proposal, if implemented, will serve to protect public customers from receiving inferior prices on their orders in situations where the NBBO is crossed or locked. For example, if the PCX's market is 5 bid, 5¼ asked, and Exchange B's market is 4 bid, 4¼ asked, the NBBO will be 5 bid, 4¼ asked. If the 5 bid is based on a public customer order for 10 contracts, and that order is automatically executed, the customer would be deprived of an opportunity to cancel the order at 5 and buy 10 contracts at Exchange B at 4¼. This could occur regardless of whether the PCX Auto-Ex is using the NBBO or PCX quotes. Moreover, during the time that the market is crossed, it is not immediately clear whether the crossed markets arise from errors resulting from communication or system problems, keystroke errors, quotation dissemination delays, or are in fact true markets. The default mechanism will give Floor Brokers in the trading crowd an opportunity to ascertain whether the markets are erroneous and to assure that customers receive the best possible price.

While these situations occur very infrequently, the Exchange believes that investors should be protected through the use of human intervention. During these times (if so designated by the OFTC for a particular option issue), public customer orders will be manually represented in the trading crowd by Floor Brokers and handled in a manner that is consistent with the Floor Brokers' best execution obligations.[7]

2. Basis

The proposal is consistent with Section 6(b)(5)[8] of the Act because it is designed to facilitate transactions in securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition 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

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, 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, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–98–55 and should be submitted by December 30, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32666 Filed 12–8–98; 8:45 am]

BILLING CODE 8010–01–M

[5] *Id.*

[6] *Id.*

[7] *See* PCX Rule 6.46 (''Responsibilities of Floor Brokers'').

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40728; File No. SR–PHLX–98–37]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Rule 220 Regarding Stopping Stock

November 30, 1998.

I. Introduction

On September 28, 1998, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt Rule 220, which concerns stopping stock.

The proposed rule change was published for comment in the **Federal**

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Register on October 29, 1998.[3] No comments were received on the proposal. This order approves the proposal.

II. Description of the Proposal

The Phlx proposes to adopt Rule 220 regarding stopping stock.[4] This rule codifies and enhances the procedures for stopping stock on the Exchange floor outlined in Phlx Advice A–2.[5]

Under the proposed rule change, an agreement by a Phlx specialist to ''stop'' securities at a specified price will constitute a guarantee by a member or member organization of the purchase or sale of the securities at the specified price or better.[6] Further, the specialist will be permitted to stop stock upon the unsolicited request of another member when the member is acting on behalf of either a public customer account or an account in which the member or another member has an interest. After granting the stop, the specialist must display the order in his or her quote, including representative size, and reduce the spread by bidding (offering) at a price higher (lower) than the prevailing bid or offer if not executed immediately after being stopped.[7] This procedure applies in other than minimum variation markets, that is, where the spread in the quotation is greater than twice the minimum variation.

Proposed Rule 220(b)(2) will prohibit the specialist from trading for his own account with any order he stopped while he is in possession of an order at an equal or better price than the price of the stopped order. The specialist must exercise due diligence to match the stopped order with such other order in his possession in accordance with Exchange Rules 119 and 120.

Proposed Rule 220(c) will provide that the member or member organization which agreed to stop the securities in order to obtain a favorable price will either provide price improvement or guarantee the stop price. If the order is executed at a less favorable price, then the member will be liable for the adjustment of the difference between the two prices.

Under proposed Rule 220(d), stopping orders in minimum variation markets will occur primarily when the bid (offer) is at a price higher (lower) than the primary market for the day. Specifically, the rule will provide that in minimum variation markets, the specialist must change his or her quoted bid (offer) in order to reflect the size of the order being stopped. In cases of minimum variation markets, a stopped order to buy (sell) will be filled: (1) after a transaction takes place on the primary market at the stop price or higher (lower) or (2) when the share volume on the Exchange at the bid (offer) is exhausted. All orders stopped in minimum variation markets shall be executed by the end of the trading day on which the order was stopped at no worse than the stopped price. In granting a stop in a minimum variation market, a specialist should change the quoted bid (offer) size in order to reflect the size of the order being stopped.

III. Discussion

After careful review, 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, with the requirements of Section 6(b).[8] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)[9] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities and, in general, to protect investors and the public interest.[10]

In approving Phlx Advice A–2, the Commission urged the Phlx to submit a proposed rule which would ensure the proper handling of stopped stock.[11] The Commission suggested that any such rule should include, *inter alia*, the obligations of the member who agrees to grant the stop, a policy for determining the price at which the order should be executed and procedures for minimum variation markets that are consistent with the rules of priority, parity and precedence. The proposed rule change is fully responsive to the Commission's suggestions.

The practice of stopping stock enables exchange specialists to offer primary market price protection, an important price improvement function of specialists, by executing orders at better prices away from the primary market. Further, the practice of stopping stock provides the opportunity for the specialist to improve upon the market and narrow the bid/offer spread. The Commission believes the requirements of Rule 220, in particular, should increase the likelihood that a customer whose order is stopped will receive price improvement. The stop order procedures codified in Rule 220 provide that where ''the spread in the quotation is greater than the minimum variation of trading in the stock, the specialist is required to reduce the spread by bidding (offering) at a price higher (lower) than the prevailing bid or offer. Specifically each order on the book which has been stopped by the Specialist must be displayed, including a representative size, at its price or better if not executed immediately after being stopped.'' [12] Accordingly, the Commission believes that the proposed rule change is consistent with the objectives of Section 6(b)(5) of the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–PHLX–98–37) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32607 Filed 12–8–98; 8:45 am]

BILLING CODE 8010–01–M

[3] Securities Exchange Act Release No. 40593 (October 22, 1998), 63 FR 58083 (File No. SR–PHLX–98–37).

[4] The proposed stopping stock rule is substantially similar to the stopping stock rules adopted by the Boston Stock Exchange (''BSE'') and the Chicago Stock Exchange (''CHX''). *See* BSE Chapter II, Section 38 and CHX Article XX, Rule 28.

[5] *See* Securities Exchange Act Release No. 34614 (August 30, 1994), 59 FR 46280 (September 7, 1994).

[6] See Proposed Rule 220(a).

[7] See Proposed Rule 220(b)(1).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] *See* Securities Exchange Act Release No. 34614 (August 30, 1994), 59 FR 46280 (September 7, 1994).

[12] *See* Proposed Rule 220(b)(1).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

United States-European Union Transatlantic Economic Partnership

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and Request for Comments.

SUMMARY: Under the Transatlantic Economic Partnership (TEP) initiative, the Governments of the United States and the European Union (EU) have agreed to explore and identify possible sectors in which the potential to extend

the U.S.–EU mutual recognition agreement (MRA) appears feasible and desirable. The United States is considering proposing to the EU that initially at least three new sectors be added to the U.S.–EU MRA: road safety equipment, marine safety equipment and calibration services. Such a proposal may be made as early as December 15, 1998, in preparation for the U.S.–EU Summit to be held on December 18, 1998. The Office of the United States Trade Representative (USTR) seeks public comment on the desirability and feasibility of negotiating mutual recognition agreements in these sectors.

DATES: Any initial comments should be submitted no later than December 15, 1998, in light of the possibility that the issues might arise in the context of the U.S.–EU Summit meeting on December 18, 1998. Additional comments should be submitted no later than January 15, 1999.

ADDRESSES: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the U.S. Trade Representative, Room 122, 600 17th Street, NW, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Ralph Ives, Deputy Assistant U.S. Trade Representative for Europe and the Mediterranean, (202) 395–4620; or James Sanford, Director for European Affairs and Technical Barriers, (202) 395–3320.

SUPPLEMENTARY INFORMATION: On May 18, 1998, President Clinton and his EU counterparts issued a joint statement announcing the TEP. [**Federal Register** notice, June 9, 1998, describes the TEP.] On November 9, 1998, the United States and the EU reached agreement on a joint ''Action Plan,'' as called for in the May 18 TEP statement. A copy of the Action Plan is available on USTR's website (www.ustr.gov) or upon request from Ms. Gloria Blue.

The U.S.–EU MRA was negotiated over a four year period. The MRA was signed on May 18, 1998. On October 30, 1998, the United States and the EU exchanged letters notifying the completion of their respective internal procedures, thereby allowing the MRA to enter into force on December 1, 1998.

An MRA generally allows conformity assessment—e.g., testing, inspecting, certifying—to be performed in the United States to standards and regulations of the other country, and vice versa, which reduces cost and saves resources. Under an MRA, the United States will maintain its current high level of health, safety, and environmental standards. The existing sectoral annexes of the U.S.–EU MRA cover the following products and associated conformity assessment procedures: (1) telecommunications and information technology equipment; (2) network and electromagnetic compatibility (EMC) for electrical products; (3) electrical safety for electrical products; (4) good manufacturing practices (GMP) for pharmaceutical products; (5) GMP and product assessment for certain medical devices; (6) and safety of recreational craft. Each sectoral annex contains specific provisions with respect to the products and associated conformity assessment procedures covered in the annex.

An *initial* tranche of additional sectors to propose to the European Commission of the EU might include the following:

Marine Safety Equipment

The U.S. Coast Guard of the Department of Transportation administers conformity assessment requirements for marine safety equipment used on merchant ships, which includes survival craft and other lifesaving equipment, as well as fire protection equipment and systems. The EU has similar conformity assessment requirements. Both conformity assessment systems are based on the same standards under the International Convention for the Safety of Life at Sea (SOLAS).

Road Safety Equipment

The U.S. Federal Highway Administration (FHWA), in the Department of Transportation, administers an acceptance program for equipment purchased by U.S. authorities with federal or other highway funds. The road safety equipment sector includes such devices as guardrails, bridge rails, median barriers, crash cushions, breakaway supports, work zone devices as well as other devices used on highways to ensure safety of errant motorists. The FHWA accepts test and evaluation procedures by which all manufacturers can qualify to sell in the U.S. market. The EU maintain similar requirements under its Construction Products Directive. Both systems involve third-party tests and acceptance (certifications).

Calibration Services

As the national metrological authority for the United States, the National Institute for Standards and Technology (NIST) generates measurement criteria used by U.S. regulatory agencies and the marketplace for such products as avionics and other electronic equipment. A mutual recognition agreement would recognize the equivalence of NIST's generated measures with those developed by EU national laboratories.

Public Comments

All written comments should be addressed to: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, 600 17th Street NW, Room 122, Washington, DC 20508.

The Chairman of the TPSC invites written comments from interested persons on the feasibility and desirability of negotiating MRAs in each of the sectors identified above. Comments are invited in particular on: (a) the benefits for pursuing an MRA in each of the sectors; and (b) any specific concerns regarding an MRA in any of the sectors, particularly any concerns regarding public safety considerations.

All submissions must be in English and should conform to the information requirements of 15 CFR Part 2003. Interested persons should submit initial written comments, particularly any objections to a proposed sector, in five (5) typed copies, as soon as possible, and by no later than December 15, 1998. All additional comments should be submitted by no later than January 15, 1999. Comments should state clearly the position taken and should describe the specific information (including data, if possible) supporting that position.

If the submission contains business confidential information, 5 copies of a confidential version must also be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, any submissions containing business confidential information must be clearly marked ''Confidential'' at the top and bottom of the cover page (or letter) and of each succeeding page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, ''public version'' or ''non-confidential.''

Written comments submitted in connection with this request, except for information granted ''business confidential'' status pursuant to 15 CFR 2003.6, will be available for public inspection at the USTR Reading Room, Room 101, Office of the United States Trade Representative, 600 Seventeenth Street, NW, Washington, DC. An appointment to review the file may be made by calling Brenda Webb at (202) 395–6186. The reading room is open to the public by appointment only from

9:30 a.m. to 12:00 noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 98–32627 Filed 12–8–98; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at General Mitchell International Airport, Milwaukee, Wisconsin

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at General Mitchell International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before January 8, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to C. Barry Bateman, Airport Director of the General Mitchell International Airport, Milwaukee, Wisconsin at the following address: 5300 S. Howell Ave., Milwaukee, Wisconsin 53207–6189.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Milwaukee under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Sandra E. DePottey, Program Manager, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450, 612–713–4363. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at General Mitchell International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 9, 1998, the FAA determined that the application to use the revenue from a PFC submitted by County of Milwaukee was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 12, 1999.

The following is a brief overview of the application.

PFC application number: 99–04–U–00–MKE.

Level of the PFC: $3.00.

Actual charge effective date: May 1, 1995.

Proposed charge expiration date: June 1, 2005.

Total estimated PFC revenue: $2,665,000.00.

Brief description of proposed project(s): Storm water and de-icing system design and construction; Runway 7L/25R extension.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: FAR Part 135 air taxi.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the County of Milwaukee.

Issued in Des Plaines, Illinois, on December 2, 1998.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 98–32732 Filed 12–8–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Rochester International Airport, Rochester, Minnesota

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Rochester International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before January 8, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Steven W. Leqve, Airport Manager of the City of Rochester, Rochester, MN at the following address: Helgerson Drive Southwest, Rochester, MN 55902.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Rochester under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Sandra E. DePottey, Program Manager, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450, 612–713–4350. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Rochester International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). On November 24, 1998 the FAA determined that the application to impose and use the revenue from a PFC submitted by City of Rochester was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 25, 1999.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

PFC application number: 99–02–C–00–RST.

Proposed charge effective date: April 1, 1999.

Proposed charge expiration date: November 30, 2009.

Total estimated PFC revenue: $3,912,987.00.

Brief description of proposed projects: Terminal.

Improvements; Extend Runway 2/20; Acquire Snow removal Equipment; Update storm water protection plan; PFC Administration.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: FAR Part 135 Air Taxi.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Rochester.

Issued in Des Plaines, Illinois, on December 2, 1998.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 98–32733 Filed 12–8–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Emergency Order No. 21, Notice No. 1]

Northwestern Pacific Railroad; Emergency Order to Prevent Operation of Trains on Northwestern Pacific Railroad's Trackage From Arcata, California, to Mile Post 63.4 Between Schellville and Napa Junction, California

The Federal Railroad Administration (FRA) of the United States Department of Transportation (DOT) has determined that public safety compels issuance of this Emergency Order requiring the Northwestern Pacific Railroad (NWP) of Eureka, California, to discontinue operation by anyone of trains on the NWP rail line from mile post 295.5 at Arcata, California to mile post 63.4 between Schellville, California and Napa Junction, California until the NWP inspects and properly repairs its track and grade crossing signals, and it trains its employees how to properly maintain the safety of its track and grade crossing signals.

Authority

Authority to enforce Federal railroad safety laws has been delegated by the Secretary of Transportation to the Federal Railroad Administrator. 49 CFR 1.49. Railroads are subject to FRA's safety jurisdiction under the Federal railroad safety laws, 49 U.S.C. 20102, 20103. FRA is authorized to issue emergency orders where an unsafe condition or practice ''causes an emergency situation involving a hazard of death or personal injury.'' 49 U.S.C. 20104. These orders may impose such ''restrictions and prohibitions . . . that may be necessary to abate the situation.'' (*Ibid.*)

Background

The NWP operates on a 286-mile line between mile post 295.5 near Arcata, California and mile post 63.4 between Schellville, California and Napa Junction, California. The North Coast Railroad Authority, a California public agency formed pursuant to California Government Code Section 93000 *et seq.*, owns and operates that portion of the NWP between Healdsburg, mile post 68, and Arcata. Another portion over which the NWP operates and for which it is responsible for maintenance, Healdsburg to mile post 63.4 near Napa Junction, is owned by the Northwestern Pacific Railroad Authority, a joint powers agency representing the Golden Gate Bridge, Highway and Transportation District, the County of Marin, and the North Coast Railroad Authority. Operations are currently being conducted under contract by Rail-Ways, Inc.

The majority of NWP's operations involve the transportation of freight; however, in the past, the railroad also has conducted passenger operations between Willits and Healdsburg. The NWP connects to the California Northern Railroad, another freight railroad, at Schellville. It also connects to the California Western Railroad, which operates both freight and passenger trains, at Willits. The California Western operates over about one mile of NWP trackage in order to interchange freight operations with the NWP at Willits and to reach its passenger terminal in Willits.

The NWP traditionally hauls mostly timber and wood products, but it also hauls some hazardous materials, especially over the portion of the line south of Willits. Maximum authorized train speed on the line is 30 m.p.h., although train speed over that portion of the line affected by Emergency Order No. 14 is restricted to 10 m.p.h.

The NWP is subject to the jurisdiction of FRA. Portions of its operations currently are subject to Emergency Order No. 14 issued on June 7, 1990, when the line of railroad was known as the Eureka Southern Railroad. Emergency Order No. 14 remains in effect from mile post 145.5 near Willits to Ft. Seward, mile post 216.6 It prohibits transportation of passengers until the track complies with class 1 track standards and prohibits transportation of hazardous materials until the track complies with class 1 track standards or is designated by the railroad as excepted track. Concurrent with this emergency order, FRA is amending Emergency Order No. 14 to prohibit the transportation of hazardous materials until the track complies with class 1 track standards.

Northern Portion, Willits to Arcata

In 1990, FRA became concerned about the track conditions on the NWP, then known as the Eureka Southern Railroad, between Willits and Eureka. At the time, the railroad hauled over the line passengers and liquified petroleum gas, a regulated hazardous material. FRA found that the track between Willits and Eureka did not meet class 1 track standards and posed an immediate threat of death or injury to persons. FRA issued Emergency Order No. 14 under which the Eureka Southern Railroad was prohibited from hauling passengers until the track met class 1 track standards and from hauling hazardous materials until the track either met class 1 standards or was designated by the railroad as excepted. The excepted track provision, found at 49 CFR 213.4, limits the hauling of hazardous materials to five cars per train and places other restrictions on the designated track.

On October 1, 1990, because of improved conditions, FRA lifted Emergency Order No. 14 between mile posts 142.5 and 145.5, near Willits, and between mile posts 216.6 and 284.1, Fort Seward to Eureka. Since 1990, the NWP has complied with the terms of the emergency order for the remainder of the affected area by discontinuing hauling passengers and hazardous materials between Fort Seward and Willits.

The northern portion of the NWP has been subject to flooding for the past several years. Due to flooding which occurred within the last year, the NWP has discontinued operations on the northern portion from Nashmead (mile post 175.5) to Arcata. The railroad continues to operate on the northern portion between Willits and Nashmead. The NWP has applied to the Federal Emergency Management Agency (FEMA) for funding for repair of flood damage that occurred in 1995, 1997 and 1998. As a result of the application, FEMA, with FRA's assistance, recently conducted a survey of track conditions between Willits and Eureka. FEMA has agreed to provide $1 million to NWP for repair of flood damage.

Southern Portion, Willits to Mile Post 63.4

In 1997, FRA, in partnership with the California Public Utilities Commission

(CPUC), reviewed NWP's compliance with Federal safety statutes and regulations on the portion of the line south of Willits. The review revealed widespread noncompliance similar to noncompliance that FRA and the CPUC previously had discovered on this line in the past several years. In conducting numerous inspections of the NWP in the previous years, FRA and CPUC inspectors identified hundreds of defective track conditions, many of which became the basis for recommendations for civil penalty assessments against the railroad. The railroad frequently failed to make corrections even after defective conditions were identified by FRA or the CPUC.

The review conducted by FRA and CPUC also revealed that the NWP was not performing required periodic tests of its locomotive air brake equipment, and that all of the railroad's locomotives exhibited defective conditions which posed a hazard to the personal safety of NWP personnel operating the equipment. FRA and the CPUC concluded that the NWP was in need of a system-wide program to train its employees to recognize safety violations and to perform necessary repairs promptly and correctly.

On June 11, 1997, representatives of FRA and the CPUC met with NWP's executive director, Dan Hauser, and its general manager, Jack Tremain, as well as two members of the railroad's Board of Directors. The group agreed to and signed a Safety Compliance Agreement under which the NWP would perform specified repairs and employee training by determined deadlines. However, one year after the agreement was executed, the NWP had performed only three of the 11 action items identified by the Compliance Agreement. On June 28, 1998, the Federal Railroad Administrator issued a Compliance Order based mostly upon the terms of the prior Agreement. In summary, the Compliance Order, which remains in effect, directs the NWP to:

1. Cease passenger operations between Willits and Schellville until the track is repaired to class 1 track standards;

2. Limit hauling of hazardous materials between Willits and Schellville to two cars per train, and prohibit hauling of any hazardous materials over trackage that is within 100 feet of a bridge or public road and which does not meet class 1 track standards;

3. Develop and furnish to FRA and the CPUC a track maintenance plan and program;

4. Establish a program of employee training on the Federal Track Standards;

5. Certify abilities of each individual conducting track inspections;

6. Establish a program of employee training regarding inspections of locomotive power and equipment;

7. Certify abilities of each individual conducting inspections of locomotive power and equipment;

8. Certify inspection reports of locomotive power and equipment inspections;

9. Certify that proper repairs have been made of all defects found as a result of locomotive power and equipment inspections;

10. Perform testing on passenger and freight cars relative to single car tests and repair tests.

FRA reviewed NWP's compliance with the Compliance Order in September and October, 1998, and found that the railroad is not following many of the Order's directives. Track inspections conducted by FRA and the CPUC discovered that the trackage within 100 feet of bridges and public road between Willits and mile post 63.4, over which hazardous material are hauled, does not meet class 1 track standards. The railroad has failed to develop a track maintenance program, and it dropped its training of track inspection personnel after only two classes of a 24-class training program. Furthermore, the NWP has an inadequate number of employees who are qualified to inspect track.

Recent Safety Surveys

In light of the NWP's failure to comply with the Compliance Order after several months, FRA and the CPUC surveyed operations on the southern portion of the railroad in September and October, 1998, to assess its overall safety. In October and November, 1998, FRA inspectors accompanied inspectors from the FEMA on surveys of track damage caused by past flooding on the northern portion. In both portions, the inspectors found numerous defects that pose an immediate hazard of death or injury to persons.

Grade Crossing Signals

FRA's regulations addressing grade crossing signal system safety, found at 49 CFR part 234, require railroads to repair, ''without undue delay,'' any essential component of a grade crossing signal that fails to perform its intended function, and until the repair is made, the railroad is to provide alternative measures of safeguarding the crossing. *See* 49 CFR 234.207. These temporary measures, delineated in 49 CFR 234.105, provide for manual flagging by railroad personnel whenever a train must occupy a grade crossing where the signals are not properly functioning. Properly functioning grade crossing signals, and temporary flagging in the event of a signal failure, are absolutely essential to the safety of the grade crossing. Trains traveling through a grade crossing, even at very slow speeds, are not able to stop suddenly to avoid a car in the crossing. Therefore, motorists attempting to cross a grade crossing must be adequately warned about a train's approach so that a potentially deadly accident can be averted.

In recent inspections of grade crossings on the NWP and from information provided by the railroad itself, FRA and CPUC inspectors found that 32 of the railroad's 127 grade crossing signals are not operational. While the railroad has instructed train crews to stop and flag each crossing where the signal is out of service, FRA and CPUC inspectors found one instance when a train crew did not perform this safety duty. Furthermore, many of the grade crossing signals have been out of service for several months, in violation of the Federal regulations' requirement to repair the signals ''without undue delay.''

Many of the grade crossings where the signals are out of service are situated in towns along the NWP line. In Petaluma, one grade crossing serves 22,000 vehicles per day, while another serves 13,000 every day. The NWP operates four to six train movements through these crossings each day, Monday through Friday. At other crossings where the grade crossing signals are out of service, the daily vehicle count ranges from 200 to 6,000. Vehicles in these counts include trucks carrying hazardous materials, including flammable substances.

FRA and CPUC inspectors also found that NWP employees generally lack the supervision, knowledge, test equipment, and supplies necessary to adequately maintain the grade crossing signals. The railroad's two signal maintainers have no signal standards or instructions, nor are they knowledgeable about all necessary signal maintenance. They do not have proper test equipment, such as meters, meggers, relay testers, and shunts. Tests required by FRA's grade crossing safety regulations are past due at all 127 grade crossings, including relay, insulation resistance, and warning tests. In addition, the NWP lacks sufficient parts and materials to adequately maintain the warning system. Numerous NWP circuit plans are out-dated, illegible, or simply non-existent. They need to be corrected,

redrawn , and in some cases, redesigned, yet the railroad lacks procedures to correct or redraw circuit plans.

Track Safety

FRA's track safety regulations, found at 49 CFR part 213, prescribe minimum safety requirements for railroad track. There are six classes of track defining maximum speed and minimum maintenance requirements. By designating track as a certain class, a railroad commits to maintaining that track to the standards established by the track safety regulations for that class. Much of the NWP's trackage from Willits to Schellville is designated as class 2 track. However, the numerous track defects found by FRA and the CPUC, as well as the NWP's apparent lack of commitment to properly repair the track, indicate that much of the track does not meet even the standards for class 1, the lowest class of track.

FRA and the CPUC conducted track inspections on the southern portion of the NWP between September 28 and October 15, 1998. A total of six inspections covered the line from mile post 63.4 between Schellville and Napa Junction to Willits at mile post 139.5. Inspectors identified 298 defective conditions in 148 miles of track. The majority of the defects (254) were defective crosstie conditions, including defective joint ties and ties not effectively distributed to support 39 feet of track. In many places, the ties were broken, split, or impaired to the extent that they allowed the ballast to work through. They could not hold spikes and they were allowing the tie plates or the base of the rail to move laterally more than a half inch.

These defects pose particularly serious threats to safety. Effective ballast and crossties provide the lateral and vertical support of the rail to prevent trains from derailing. Without this support, the track gage, the distance between the inside faces of the rail heads, may become too wide or too tight. Gage that is either wider or narrower than allowed by FRA regulation greatly increases the possibility of derailment due to car or locomotive wheels dropping off the rails.

The FRA and CPUC track inspectors also found 12 areas where water carrying facilities associated with the track were inadequate to perform proper drainage. Two of these drainage facilities are associated with railroad bridges. At one location, a wooden box culvert has collapsed. Under the regulations (49 CFR § 213.33) each drainage facility associated with a track structure must be kept free of obstruction to accommodate expected water flow for the area it serves. If drainage surrounding the track is not adequate, the condition can lead to wash-outs which will disturb the lateral and vertical support of the rail causing wide or tight gage and possible derailments. Adequate drainage is especially important for the NWP during the winter months when rainfall typically is greater.

Finally, the track safety regulations require that vegetation immediately adjacent to the track bed must be controlled so that it does not pose a fire hazard, obstruct visibility of signs and signals, interfere with railroad employees' trackside duties, prevent proper functioning of signals, or prevent employees from inspecting moving equipment. See 49 CFR 213.37. FRA and CPUC inspectors report that in many areas along the NWP trackage they inspected, the vegetation obstructs any view of the track structure. Some vegetation creates a fire hazard to timber bridges, trestles, and wooden box culverts. Other vegetation obstructs the visibility of signs and signals along the right-of-way and at grade crossings. While vegetation naturally occurs and re-occurs along any railroad track, it cannot be allowed to flourish to the extent that it inhibits the safe operation of the railroad. Vegetation that has been allowed to grow to the point where signals cannot operate properly or cannot be seen, or where it prevents railroad personnel from inspecting the track, or where it becomes conducive to setting fire to bridges and other wooden track structures, poses an imminent threat to the safety to railroad employees and to the traveling public.

Between November 4 and November 13, 1998, FRA and FEMA inspectors surveyed 262 separate locations on the northern portion of the railroad that the NWP identified as storm damaged. The inspectors found numerous locations where proper drainage is not possible because the drainage facilities are plugged or in disrepair or because ditches are plugged, overgrown or inadequate. The area between Willits and Arcata is noted for its constant earth movement, mud flows, sinks and heaves. Most of the repairs that have been made by the NWP to alleviate the flooding problems have been temporary in nature. At some locations, the railroad inserted new culverts to drain water from ponded areas but failed to install the culverts at the correct depth or angle. In numerous locations, the NWP has used plastic and rubber pipe, rather than metal pipe, which is quickly crushed by the weight of work trains. It is not likely that the drainage facilities in place will be adequate to withstand the next rainy season this winter.

Because of inadequate drainage and poor subgrade, the railroad has difficulty maintaining proper surface and alignment of track. The FRA and FEMA inspectors found numerous locations where the track surface, alignment, and crossties were unacceptable for class 1 track standards. In addition, overgrown vegetation at many locations brushes rolling stock and prevents railroad personnel from inspecting the track. In some locations, the vegetation poses a fire hazard to track carrying structures.

Finding and Order

The results of the surveys by FRA, CPUC, and FEMA inspectors of tracks and signals along the NWP line have led FRA to conclude that continued use of this rail line poses an imminent and unacceptable threat to public safety. Furthermore, a past pattern of failure by the NWP to comply with Federal railroad safety laws and regulations persuades FRA that reliance upon the cooperation of the NWP to make the necessary repairs to the track and to the signals on any part of its rail line is inadequate to protect public safety. I find that the unsafe conditions discussed above create an emergency situation involving a hazard of death or injury to persons. Accordingly, pursuant to the authority of 49 U.S.C. § 20104, delegated to me by the Secretary of Transportation (49 CFR § 1.49), it is ordered that the Northwestern Pacific Railroad shall discontinue, and shall not permit, the operation of trains over its trackage between mile post 295.5 near Arcata and mile post 63.4 between Schellville and Napa Junction while this Emergency Order remains in effect. This Emergency Order is not meant to prohibit the operation of work trains operated for the specific and sole purpose of effecting repairs on the railroad. Maximum speed of such train movements shall be 10 m.p.h.

Relief

The NWP may obtain full relief from this Emergency Order by performing the following requirements:

(1) Properly repair and inspect all grade crossing signals and certify to the Federal Railroad Administrator that all necessary repairs and inspections have been performed and that all required tests are up-to-date.

(2) Adopt a set of grade crossing signal standards and instructions acceptable by FRA. The standards and instructions should be submitted in writing to the Regional Administrator

for Region 7 who will notify the NWP within 14 days of the submission whether or not the standards and instructions are approved. If they are not approved, the Regional Administrator will describe what additional measures must be taken to secure approval.

(3) Update, correct and/or redraw circuit plans for each grade crossing signal system to meet compliance with 49 CFR §§ 234.201 and 234.203. A list of locations of the updated, corrected or redrawn circuit plans should be submitted to the Regional Administrator for Region 7.

(4) Provide proper and adequate test equipment for signal maintainers.

(5) Repair all track not subject to Emergency Order No. 14 to class 1 track standards as detailed in 49 CFR Part 213. [Note: Emergency Order No. 14 already requires the Northwestern Pacific Railroad to repair all track subject to that order to class 1 track standards or designate the track as excepted track in accordance with 49 CFR 213.4. By separate notice, Emergency Order No. 14 is being amended to require repair to class 1 track standards for the hauling of passengers and all hazardous materials. Otherwise, the railroad may designate the track still subject to that order as excepted.]

(6) Clear all vegetation from drainage facilities and away from signs and signals and track bed so that the track meets the requirements of 49 CFR 213.37;

(7) Furnish FRA with a 12-month track maintenance plan that includes, at a minimum the number and location (mile by mile) of crossties to be installed, location and extent of rail surfacing, location and nature of drainage facility maintenance, location and nature of vegetation control, extent of rail replacement, schedule for accomplishing programs, and criteria used to determine the location and extent of tie renewal and replacement (e.g., traffic density, track inspection data, and accident history).

(8) Establish a program of employee training on the Federal Track Standards to ensure that employees performing inspection, maintenance, and restoration work are qualified in accordance with 49 CFR 213.7. The training program shall ensure that track inspectors, track foremen, and first level track supervisors can assure compliance with the requirements of 49 CFR part 213. FRA is to be furnished a copy of the training program.

(9) Certify in writing that each individual conducting track inspections has sufficient knowledge, skills, and ability to successfully conduct the types of inspections which will be performed by that individual. Records of that certification are to be maintained by the railroad.

(10) Obtain approval from the Federal Railroad Administrator that all of the requirements of this Emergency Order have been met and properly performed. To obtain relief, NWP should inform in writing the Federal Railroad Administrator, with a copy to the Regional Administrator of FRA's Region 7, that it believes all of the requirements of this Emergency Order have been met. Within 30 days of the notification, FRA will conduct inspections of the line, and within seven days of the inspections, will inform the railroad in writing whether this Emergency Order is lifted. If FRA does not lift the order, the written response will specifically describe what additional measures need to be taken to meet all of the requirements of this Emergency Order.

Partial Relief

In order for FRA to consider granting partial relief from this Emergency Order, the NWP must first meet all of the system-wide requirements, i.e., requirements 2, 4, 7, 8, and 9. The NWP may then obtain partial relief for any portion of the line for which all of the requirements of this Emergency Order are met. NWP should inform in writing the Federal Railroad Administrator, with a copy to the Regional Administrator of FRA's Region 7, that it believes all of the requirements of this Emergency Order have been met for a specified section of the railroad's line. Within 30 days of the notification, FRA will conduct inspections of that specified portion of the line, and within seven days of the inspections, will inform the railroad in writing whether this Emergency Order is lifted for that specified portion. If FRA does not lift the order for the specified portion, the written response will specifically describe what additional measures need to be taken to meet all of the requirements of this Emergency Order.

Penalties

Any violation of this order shall subject the person committing the violation to a civil penalty of up to $22,000. 49 U.S.C. 21301. FRA may, through the Attorney General, also seek injunctive relief to enforce this order. 49 U.S.C. 20112.

Effective Date and Notice to Affected Persons

This Emergency Order shall take effect at 6:01 p.m. (PST) on November 27, 1998, and apply to all operations of trains on or after that time. Notice of this Emergency Order will be provided by publishing it in the **Federal Register**. Copies of this Emergency Order will be sent by mail or facsimile prior to publication to: Northwestern Pacific Railroad Authority through the North Coast Railroad Authority Board of Directors, the Golden Gate Bridge, Highway and Transportation District, and Marin County. A copy will also be sent to Rail-Ways, Inc.

Review

Opportunity for formal review of this Emergency Order will be provided in accordance with 49 U.S.C. 20104(b) and section 554 of Title 5 of the United States Code. Administrative procedures governing such review are found at 49 CFR part 211. *See* 49 CFR 211.47, 211.71, 211.73, 211.75, and 211.77.

Issued in Washington, D.C. on November 25, 1998.

Jolene M. Molitoris,

Administrator.

[FR Doc. 98–32649 Filed 12–8–98; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Emergency Order No. 14, Notice No. 5]

Northwestern Pacific Railroad; Amendment to Prohibit the Transportation of Hazardous Materials between Willits, California and Ft. Seward, California

The Federal Railroad Administration (FRA) of the United States Department of Transportation (DOT) has determined that public safety compels issuance of this amendment to Emergency Order No. 14 prohibiting the Northwestern Pacific Railroad (NWP) of Eureka, California, from transporting, or permitting anyone to transport, hazardous materials over any track from mile post 145.5 near Willits, California to mile post 216.6 near Ft. Seward, California.

Background

FRA issued Emergency Order No. 14 on June 7, 1990, when the railroad was known as the Eureka Southern Railroad. The Emergency Order prohibits transportation of passengers until the track complies with class 1 track standards and prohibits transportation of hazardous materials until the track complies with class 1 track standards or is designated by the railroad as excepted track. The Emergency Order originally covered the rail line from Willits to

Eureka, mile post 284.1. However, because of improved conditions, FRA lifted the Emergency Order between mile posts 142.5 and 145.5, near Willits, and between mile posts 216.6 and 284.1, Fort Seward to Eureka on October 1, 1990. The Emergency Order remains in effect from mile post 145.5 near Willits to mile post 216.6, Ft. Seward. FRA granted further partial relief in January, 1997, by allowing the NWP to haul hazardous materials over track not designated as excepted when the materials hauled were for construction, maintenance, and operation of the railroad.

In conjunction with the California Public Utilities Commission (CPUC) and the Federal Emergency Management Agency (FEMA), FRA conducted in September, October, and November 1998, safety surveys of the entire NWP line from mile post 295.5 near Arcata to milepost 63.4 between Schellville and Napa Junction. The surveys revealed unsafe conditions and practices which, in FRA's judgment, pose an emergency situation involving a hazard of death or personal injury. FRA found that 32 of the railroad's 127 grade crossing signals are not operational, endangering any motorist attempting to cross a grade crossing without adequate warning about a train's approach. The surveys also showed widespread track safety defects including numerous defective crossties, improper drainage, and overgrown vegetation posing a fire hazard and obstructing visibility of signs and signals. Most important, FRA found locations where the conditions for movement over excepted track were not being met.

The area between Willits and Eureka, which encompasses the area affected by Emergency Order No. 14, is noted for its constant earth movement, mud flows, sinks and heaves. Most of the repairs that have been made by the NWP to alleviate flooding problems have been temporary in nature. At some locations, the railroad inserted new culverts to drain water from ponded areas but failed to install culverts at the correct depth and angle. In numerous locations, the NWP has used plastic and rubber pipe, rather than metal pipe, which is crushed quickly by the weight of work trains.

Because of inadequate drainage and poor subgrade, the railroad has difficulty maintaining proper surface and alignment of track. In addition, overgrown vegetation at many locations brushes rolling stock and prevents railroad personnel from inspecting the track. In some locations the vegetation poses a fire hazard to track carrying structures.

In response to these findings, FRA is issuing, concurrent with this amendment, Emergency Order No. 21, which prohibits the NWP from operating, or permitting operations, over its rail line until the railroad inspects and repairs all of its grade crossing signals and repairs the track to class 1 track standards. The requirements of Emergency Order No. 21 apply to the entire railroad, including the portion of the line still governed by Emergency Order No. 14, with the exception of the requirement that the track be repaired to class 1 track standards for all rail traffic.

Until now, Emergency Order No. 14 has permitted movement of hazardous materials over excepted track, consistent with the conditions of 49 CFR § 213.4. However, the same conditions that have caused FRA to prohibit hazardous materials traffic on excepted track elsewhere on the line also exist on the portion of the line still covered by Emergency Order No. 14. Therefore, we are amending Emergency Order No. 14 to prohibit movement of hazardous materials, except in work trains, until the track is brought to class 1 standards. Emergency Order No. 14, as amended here, remains in effect, which allows the NWP to haul non-hazardous freight between Willits and Ft. Seward over excepted track, without repairing the track to class 1 track standards. With Emergency Order No. 14 still in place, NWP is allowed to operate with slightly fewer restrictions than in other parts of the railroad over a portion of its line where the general population is smaller and rail traffic is less extensive.

Amendment to the Order

I find that the unsafe conditions described above compel me to address the hazards presented by hauling hazardous materials over excepted track. Accordingly, I order that the NWP may not haul materials required by 49 CFR Parts 171–179 to be placarded as hazardous over the portion of its line still covered by Emergency Order No. 14 until such trackage meets class 1 standards. The railroad may continue to haul non-hazardous freight over the track once the track is designated as excepted. This amendment is not meant to prohibit the hauling of hazardous materials in work trains for the specific and sole purpose of effecting repairs on the railroad.

Relief

The NWP may obtain full relief from this amendment and all of Emergency Order 14 by fulfilling the following requirements:

1. Repair the track to class 1 track standards.

2. Obtain approval from the Federal Railroad Administrator that all of the requirements of Emergency Order No. 14 have been met and properly performed. To obtain relief, NWP should inform in writing the Federal Railroad Administrator, with a copy to the Regional Administrator of FRA's Region 7, that it believes all of the requirements of Emergency Order No. 14 have been met. Within 30 days of notification, FRA will conduct inspections of the line and within seven days of the inspections, will inform the railroad in writing whether Emergency Order No. 14 is lifted. If FRA does not lift the order, the written response will specifically describe what additional measures need to be taken to meet all of the requirements of Emergency Order No. 14.

Penalties

Any violation of Emergency Order No. 14, as amended, shall subject the person committing the violation to a civil penalty of up to $22,000. 49 U.S.C § 21301. FRA may, through the Attorney General, also seek injunctive relief to enforce this order. 49 U.S.C § 20112.

Effective Date

This amendment shall take effect at 12:01 (PST) on November 27, 1998, and apply to all operations of trains on or after that time. Copies of this amendment Order will be sent by mail or facsimile prior to publication to: Northwestern Pacific Railroad Authority through the North Coast Railroad Authority Board of Directors, the Golden Gate Bridge, Highway and Transportation District, and Marin County. A copy will also be sent to Rail-Ways, Inc.

Review

Opportunity for formal review of this amendment will be provided in accordance with 49 U.S.C. 20104(b) and section 554 of Title 5 of the United States Code. Administrative procedures governing such review are found at 49 CFR part 211.

Issued in Washington, D.C. on November 25, 1998.

Jolene M. Molitoris,

Administrator.

[FR Doc. 98–32650 Filed 12–8–98; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–4803]

Notice of Receipt of Petition for Decision that Nonconforming 1988–1989 Volkswagen Transporter Multi-Purpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1988–1989 Volkswagen Transporter multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1988–1989 Volkswagen Transporter MPVs that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is January 8, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm.]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether 1988–1989 Volkswagen Transporter MPVs are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1988–1989 Volkswagen Vanagon MPVs that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Volkswagenwerke, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared 1988–1989 Volkswagen Transporters to 1988–1989 Volkswagen Vanagons, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that 1988–1989 Volkswagen Transporters, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as 1988–1989 Volkswagen Vanagons, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that 1988–1989 Volkswagen Transporters are identical to 1988–1989 Volkswagen Vanagons with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence . . .*, 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Motor Vehicles other than Passenger Cars,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 203 *Impact Protection for the Driver from the Steering Control System,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 219 *Windshield Zone Intrusion, and* 302 *Flammability of Interior Materials.*

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked ''Brake'' for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies that incorporate headlamps with DOT markings; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 120 *Tire Selection and Rims for Motor Vehicles other than Passenger Cars:* installation of a tire information placard.

Standard No. 208 *Occupant Crash Protection*: (a) installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, with combination lap and shoulder restraints that release by means of a single push button at both rear outboard designated seating positions, and with a lap belt in the rear center designated seating position.

Standard No. 301 *Fuel System Integrity*: installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner also states that a vehicle identification number plate

must be affixed to the vehicle to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 2, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–32591 Filed 12–8–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–4801]

Notice of Receipt of Petition for Decision That Nonconforming 1990–1991 BMW 320I Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1990–1991 BMW 320I passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1990–1991 BMW 320I passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is January 8, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether 1990–1991 BMW 320I passenger cars are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1990–1991 BMW 325IS passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Bayerische Motoren Werke, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the 1990–1991 BMW 320I passenger cars to the 1990–1991 BMW 325IS, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the 1990–1991 BMW 320I, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as the 1990–1991 BMW 325IS, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the 1990–1991 BMW 320I is identical to the 1990–1991 BMW 325IS with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that the non-U.S. certified 1990–1991 BMW 320I complies with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) substitution of a lens marked ''Brake'' for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) installation of U.S.-model headlamp assemblies that incorporate headlamps with DOT markings; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies; (d) installation of a high-mounted stop lamp if the vehicle is not already so equipped.

Standard No. 110 *Tire Selection and Rims*: installation of a tire information placard.

Standard No. 111 *Rearview Mirror*: replacement of the passenger side

rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection*: installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer; (c) replacement of the driver's side air bag and knee bolster with U.S.-model components if the vehicle is not already so equipped. The petitioner states that the vehicle is equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, and with combination lap and shoulder restraints that release by means of a single push button at both rear outboard designated seating positions.

Standard No. 214 *Side Impact Protection:* installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR Part 565.

Additionally, the petitioner states that non-U.S. certified 1990–1991 BMW 320I passenger cars will be marked prior to importation to comply with the Theft Prevention Standard found in 49 CFR Part 541.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 2, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–32592 Filed 12–8–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–4802]

Notice of Receipt of Petition for Decision that Nonconforming 1995 Mercedes-Benz SL320 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT

ACTION: Notice of receipt of petition for decision that nonconforming 1995 Mercedes-Benz SL320 passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that the 1995 Mercedes-Benz SL320 that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is January 8, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether 1995 Mercedes-Benz SL320 passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1995 Mercedes-Benz SL320 that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, Daimler Benz, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1995 Mercedes-Benz SL320 passenger cars to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1995 Mercedes-Benz SL320, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1995 Mercedes-Benz SL320 is identical to its U.S. certified counterpart with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence* * * *,* 103 *Defrosting and Defogging Systems,* 104 *Windshield*

Wiping and Washing Systems, 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 Accelerator Control Systems, 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion, and* 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that the non-U.S. certified 1995 Mercedes-Benz SL320 complies with the Bumper Standard found in 49 CFR Part 581 and with the Theft Prevention Standard found in 49 CFR Part 541.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked ''Brake'' for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies that incorporate headlamps with DOT markings; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies; (d) installation of a high-mounted stop lamp if the vehicle is not already so equipped.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection*: installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems*: rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection*: (a) installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer; (c) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components if the vehicle is not already so equipped. The petitioner states that the vehicle is equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, and with combination lap and shoulder restraints that release by means of a single push button at both rear outboard designated seating positions.

Standard No. 214 *Side Impact Protection*: installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity*: installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 2, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–32593 Filed 12–8–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–4800]

Notice of Receipt of Petition for Decision That Nonconforming 1984–1992 BMW K100 Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1984–1992 BMW K100 motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1984–1992 BMW K100 motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is January 8, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or

importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania

(''Champagne'')(Registered Importer 90–009) has petitioned NHTSA to decide whether non-U.S. certified 1984–1992 BMW K100 motorcycles are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1984–1992 BMW K100 motorcycles that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Bayerische Motoren Werke, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1984–1992 BMW K100 motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1984–1992 BMW K100 motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1984–1992 BMW K100 motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses,* 111 *Rearview Mirrors,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* and 122 *Motorcycle Brake Systems.*

Petitioner additionally contends that the vehicles are capable of being readily altered to meet the following standard, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* Installation of U.S.-model head lamp assemblies.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* Installation of a tire information label.

Standard No. 123 *Motorcycle Controls and Displays:* Installation of a U.S.-model speedometer/odometer calibrated in miles per hour.

The petitioner also states that a vehicle identification number plate will be affixed to the vehicle to meet the requirements of 49 CFR Part 565.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 2, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–32594 Filed 12–8–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–391 (Sub–No. 5X)]

Red River Valley & Western Railroad Company—Abandonment Exemption—in Burleigh, Kidder and Stutsman Counties, ND

Red River Valley & Western Railroad Company (RRVW) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon approximately 59.70 miles of rail line from milepost 21.55, west of Woodworth, to milepost 81.25, in Regan, in Burleigh, Kidder and Stutsman Counties, ND. The line traverses United States Postal Service Zip Codes 58475, 58478, 58488, 58412, 58494 and 58477.

RRVW has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic moving over the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 8, 1999, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 21, 1998. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 29, 1998, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Rose-Michele Weinryb, Esq., Weiner, Brodsky, Sidman & Kider, P.C., 1350 New York Avenue, N.W., Suite 800, Washington, DC 20005–4797.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

RRVW has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by December 14, 1998. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board,

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[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), RRVW shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by RRVW's filing of a notice of consummation by December 9, 1999, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: December 1, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–32412 Filed 12–8–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 3, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 8, 1999 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0575.

Form Number: IRS Form 5330.

Type of Review: Extension.

Title: Return of Excise Taxes Related to Employee Benefit Plans.

Description: Code sections 4971, 4972, 4973(a)(3), 4975, 4976, 4977, 4978, 4978A, 4978B, 4979, 4979A, and 4980 impose various excise taxes in connection with employee benefit plans. Form 5330 is used to compute and collect these taxes.

Respondents: Business and other for-profit, individuals or households.

Estimated Number of Respondents/Recordkeepers: 8,403.

ESTIMATED BURDEN HOURS PER RESPONDENT/RECORDKEEPER

Recordkeeping	18 hr., 39 min.
Learning about the law or the form.	8 hr., 50 min.
Preparing and sending the form to the IRS.	9 hr., 32 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 310,995 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–32647 Filed 12–8–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 3, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 8, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1594.

Regulation Project Number: REG–251520–96 Final.

Type of Review: Extension.

Title: Classification of Certain Transactions Involving Computer Programs.

Description: The information requested in regulation Section 1.861–18(k) is necessary for the Commissioner to determine whether a taxpayer properly is requesting to change its method of accounting.

Respondents: Business and other for-profit.

Estimated Number of Respondents: 1.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 1 hour.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–32648 Filed 12–8–98; 8:45 am]

BILLING CODE 4830–01–P

federal register

Wednesday
December 9, 1998

Part II

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources: Volatile Organic Compound Emissions From the Synthetic Organic Chemical Manufacturing Industry Wasterwater; Supplement; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–6172–9]

RIN 2060–AE94

Standards of Performance for New Stationary Sources: Volatile Organic Compound Emissions From the Synthetic Organic Chemical Manufacturing Industry Wastewater; Supplement to Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental to proposed rule and notice of public hearing.

SUMMARY: On September 12, 1994, the EPA proposed Standards of Performance for New Stationary Sources: Volatile Organic Compound Emissions from the Synthetic Organic Chemical Manufacturing Industry Wastewater. On October 11, 1995, the EPA issued a supplement to the proposal. The action proposed today clarifies and revises the previously proposed rule and proposes to add Appendix J to part 60.

Volatile organic compounds (VOC), when emitted into the ambient air, are precursors to the formation of tropospheric ozone. A wide variety of acute and chronic respiratory health effects and welfare (e.g., agricultural, ecosystem) effects have been attributed to concentrations of ozone commonly measured in the ambient air throughout the U.S.

Appendix J to part 60, How to Determine Henry's Law Constants, Fm Values, Fr Values, and Fe Values for Organic Compounds, is being proposed today. This appendix provides the methodology for determining Henry's law constants, fraction measured (Fm) values, fraction removed values (Fr), and fraction emitted (Fe) values.

DATES: *Comments.* Comments must be received on or before February 8, 1999. Requests for a hearing must be received on or before December 24, 1998.

Public Hearing. Anyone requesting a public hearing must contact the EPA no later than December 24, 1998. If a hearing is held, it will take place on January 8, 1999, beginning at 10:00 a.m.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–94–32 (see docket section below), Room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Public Hearing. If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. JoLynn Collins, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–5671 or by electronic mail (e-mail) to collins.jolynn@epamail.epa.gov.

Docket. Docket No. A–94–32, containing the supporting information for the proposed NSPS, are available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, first floor, 401 M Street SW, Washington, DC 20460, or by calling (202) 260–7548 or 260–7549. A reasonable fee may be charged for copying.

Portions of the HON wastewater docket, Docket No. A–90–23, specifically sections II–A, II–B, II–I, III–B, IV–A, IV–B, IV–J, and VII–B, are incorporated by reference into Docket No. A–94–32 and are available at the Air and Radiation Docket and Information Center as well.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed rule, contact Ms. Mary Tom Kissell, Waste and Chemical Processes Group, telephone (919) 541–4516 or e-mail to kissell.mary@epamail.epa.gov. Her mailing address is Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711. For questions about Fm, Fr, Fe, Henry's law constants, or WATER8, contact the Air Emissions Models Hotline, telephone (919) 541–5610. For questions about applicability, contact the appropriate EPA regional office or Ms. Marcia Mia, Office of Enforcement and Compliance Assurance, telephone (202) 564–7042.

SUPPLEMENTARY INFORMATION: Comments on the revisions to the proposal may also be submitted electronically by sending 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 will also be accepted on diskette in WordPerfect 6.1 or ASCII file format. All comments in electronic form must be identified by the docket number A–94–32. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

I. Regulated Entities and Background Information

A. Regulated Entities

The regulated category and entities affected by this action are included in Table 1 of this preamble.

TABLE 1.—EXAMPLES OF REGULATED ENTITIES

Category	Examples of regulated entities
Industry	Synthetic organic chemical manufacturing industry (SOCMI) units, e.g., producers of benzene, toluene, or any other chemical listed in Table 1 of 40 CFR part 60, subpart YYY.

Table 1 is not intended to be exhaustive but, rather, provides a guide for readers regarding entities likely to be interested in the revisions to the regulation affected by this action. Entities potentially regulated by the SOCMI wastewater NSPS are those which produce as primary products any of the chemicals listed in table 1 of 40 CFR part 60, subpart YYY. To determine whether your facility is regulated by this action, you should carefully examine all of the applicability criteria in § 60.770. 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. Health and Welfare Effects of VOC

VOC, when emitted into the ambient air, are precursors to the formation of ozone at ground-level, where it can be harmful to breathe. It is the prime component of smog in cities. Exposure to ozone is associated with health effects and damage to vegetation. Ozone impairs normal functioning of the lungs and reduces the ability to perform physical exercise; the effects are more severe in individuals with sensitive respiratory systems. Symptoms associated with ozone exposure include cough, chest pain, and throat irritation. Emerging health effects information suggests some healthy adults engaged in moderate exercise for 6 to 8 hours may experience symptoms and reduction in lung function even at exposure levels below the current ozone health standard. Of perhaps greater concern are the potential chronic health effects that may result from repeated exposure to ozone over many seasons or a lifetime, such as inflammation of lung tissue, which precedes permanent scarring of lung tissue. Animal studies have shown that chronic ozone exposures of months to years do indeed cause permanent

reductions in lung function and lung tissue damage.

Children are at a higher risk from ozone exposure than adults. They breathe more air per pound of body weight than adults and they spend more time outdoors, especially in the summer, when exposure to ozone is more prevalent. Because children's respiratory systems are still developing, they are more susceptible than adults to environmental threats.

Studies of the major cash crops in the U.S. indicate that ozone is responsible for several billion dollars in agricultural crop yield loss each year. Ozone also causes noticeable foliar damage in many crops which reduces marketability and value. Finally, it appears that ozone is responsible for forest and ecosystem damage, which may be exhibited as foliar damage, reduced growth rate, and increased susceptibility to insects and disease.

Some VOC that would be regulated by this rule, including benzene, hexane, methyl ethyl ketone, toluene, and naphthalene, are also organic hazardous air pollutants. These organic hazardous air pollutants are known to cause a range of adverse health effects such as: increased risk of cancer, aplastic anemia, pancytopenia, chromosomal breakages, weakening of bone marrow, polyneuropathy (muscle weakness and numbness), and cataracts and anemia in infants.

C. Background on the Rule

On September 12, 1994 (59 FR 46780), the EPA proposed the NSPS for SOCMI wastewater in the **Federal Register**. On October 11, 1995 (60 FR 52889), the EPA published a supplement to the proposed NSPS for SOCMI wastewater in the **Federal Register**. Both of these notices are also available on EPA's Technology Transfer Network (TTN) via the Internet. The Internet address is http://www.epa.gov/ttn/. Select the CHIEF Bulletin Board once you access the TTN and then select the menu item Title I. The file names are socmireg.zip and suplprop.zip, respectively.

II. Overview of Changes to the Proposed Rule

Today the Agency is proposing revisions that are designed to clarify provisions of the proposed 40 CFR, part 60, subpart YYY. These proposed revisions address some of the public comments received in response to the September 1994 and October 1995 notices and incorporate some of the provisions promulgated in the HON, published on January 17, 1997 (62 FR 2721). If promulgated, the proposed revisions retain the same basic control requirements and best demonstrated technology as the proposed rule. Best demonstrated technology for this rule was discussed in the September 12, 1994 preamble, 59 FR 46733. A summary of the revisions is provided in the following paragraphs.

The applicability and date of compliance section (§ 60.770) has been revised to improve clarity and incorporate certain concepts relevant to applicability of the rule. Concepts such as designated chemical process unit and primary product have been added. The requirement that an affected facility must generate a wastewater stream has been removed. Modified facilities will have to be in compliance by initial startup or promulgation, whichever is later. In addition, provisions have been added to § 60.772 to clarify how to determine whether an affected facility has been modified.

Seven sections have been substantially revised in today's amendments to improve clarity and to incorporate the new ''point of determination'' concept discussed in section VI. of this preamble. The seven sections address the following topics: criteria for determining the Group 1 and Group 2 wastewater streams (§ 60.773); compliance options for wastewater tanks, surface impoundments, containers, individual drain systems, and oil-water separators (§ 60.774); performance standards for process wastewater (§ 60.779); procedures for determining Group 1 and Group 2 wastewater streams (§ 60.782); procedures for demonstrating compliance (§ 60.783); alternative monitoring and recordkeeping systems, one excursion per control device per day, excused excursions, clarification of monitoring parameter value violations, and Notification of Compliance Status (§ 60.784); and recordkeeping provisions (§ 60.785). Also, sections addressing aqueous in-process streams (§ 60.775); maintenance wastewater (§ 60.776); and, start-up, shutdown, and other provisions (§ 60.787) have been added.

Changes are also proposed to the sections governing control devices, delay of repair, monitoring, recordkeeping, and reporting, and the proposed rule's relationship to other rules. The list of SOCMI chemicals that trigger the rule's applicability was previously in § 60.788; it is now in Table 1 to subpart YYY. Other tables have been added to the subpart, and all the tables have been renumbered.

As a result, today's provisions are being proposed in §§ 60.770 through 60.789, in Tables 1 through 14, and in appendix J to part 60. This preamble is organized in the order of the proposed rule sections.

III. Revisions to Requirements for Determining Applicability and Date of Compliance (§ 60.770)

A. Applicability and Affected Facility Determination

1. Overview of Applicability and Affected Facility Determination

The application of the NSPS to SOCMI wastewater facilities under both the September 1994 proposal and today's revisions is predicated on a chemical process unit (CPU) that produces a chemical on the list of SOCMI chemicals in Table 1, and that commences construction or reconstruction, or is modified after September 12, 1994. However, today's revisions add the designated CPU concept, remove the requirement that an affected facility must generate a wastewater, add the primary product concept, provide a list of processes which are not considered SOCMI processes, clarify how storage vessels are assigned to a CPU, and include other clarifying edits.

2. Chemical Process Unit and Designated Chemical Process Unit

The term ''chemical process unit'' is used instead of ''process unit,'' which was used in the September 1994 proposal. These two terms and the term ''chemical manufacturing process unit'' used in the HON have essentially the same meaning. The difference is that the definition of chemical process unit does not include transfer racks. Transfer racks were removed from the definition because the amount of wastewater they generate is insignificant and more difficult to control as compared to individual drain systems and storage vessels.

The chemical process unit (CPU) is the basis for determining whether the process equipment is SOCMI as it was for the original proposal. As explained in section IV.D. of the September 12, 1994 preamble, using the CPU as the basis for the applicability determination has several advantages including maintaining consistency with the HON and reflecting industry construction practices.

While the CPU is the basis for determining SOCMI, today's revisions propose using the ''designated CPU'' as the basis for determining whether construction, reconstruction, or modification has occurred. The designated CPU is either the entire CPU, a process line within the CPU, or a combination of process lines within the CPU. The owner or operator may assign

either a process line, or combination of process lines, within the CPU as a designated CPU. However, once the assignment of process lines and associated storage vessels has been made, it is irrevocable.

EPA believes incorporating the designated CPU concept would add flexibility for industry while supporting EPA's long-term goals of protecting human health and the environment. Industry commented that the cost of compliance with the rule would, in some cases, be many times greater than the cost of the change. This could result in unintended consequences, such as reluctance to make process improvements, that would be damaging to industry's ability to compete in the world market. In addition, EPA believes that changes in SOCMI are on-going and that most designated CPU's would meet the applicability criteria of the rule over time.

The proposed rule excludes certain processes from the definition of CPU because they are not SOCMI processes, but are sometimes associated with SOCMI. Other SOCMI rules have also excluded these processes. The processes excluded are as follows: (1) research and development facilities; (2) petroleum refining processes (but not CPU located at petroleum refinery plant sites); (3) chemical process units located in coke by-product recovery plants; (4) solvent reclamation, recovery, or recycling operations at hazardous waste treatment, storage, and disposal facilities (TSDF) requiring a permit under 40 CFR 270 that are not part of a CPU; and, (5) organic chemicals extracted from natural sources or totally produced from biological synthesis such as pinene and beverage alcohol. Determinations for excluding processes must be based on the designation for the process unit, in contrast to the plant site.

3. CPU Must Manufacture a SOCMI Product as its Primary Product

Today's action incorporates the concept of ''primary product'' into the rule's applicability determination. The primary product determination is made for a CPU. If the product(s) of the CPU, on a mass basis, are comprised of 50 percent or more of the SOCMI chemicals listed in Table 1 of the rule, the CPU's primary product is SOCMI. For purposes of this rule, ''product'' includes products, co-products, and by-products manufactured by the CPU. ''Product'' does not include isolated intermediates, impurities, wastes, and trace contaminants.

The primary product determination is dependent upon the quantity of each chemical produced by the CPU and whether expected use of the CPU is known. The primary product provisions address both cases: (1) the expected use of the CPU is known for a 12-month period and (2) the expected use of the CPU is unknown for a 12-month period. When owners or operators know the expected use of the CPU, the primary product determination is based on the mass of product produced. If a CPU produces 50 percent or more, by mass, of the chemicals listed in Table 1, the primary product is SOCMI.

For some contract manufacturing units, the owner or operator may not be able to predict production sufficiently to make a primary product determination. In these cases, the primary product of the CPU is SOCMI once the facility begins producing a SOCMI chemical or has a contract to produce a SOCMI chemical.

EPA adopted the primary product approach to simplify applicability determinations, to limit the applicability of the rule to those CPU that produce mostly the chemicals listed in Table 1 of the rule, and to make the proposed rule more like the HON.

The revised proposed rule simplifies the determination of SOCMI in two ways. First, together with the definition of ''product,'' it clarifies the meaning of the terms ''product'' and ''to produce'' and the correct way to decide whether a source ''produces'' a listed chemical. Second, the primary product concept provides clear criteria for making a determination.

The primary product concept also limits the applicability of the rule to CPU that produce mostly SOCMI products. In the September 1994 proposal, by-products, co-products, and intermediates produced by the CPU and listed in Table 1 of the rule, in any amount, made the CPU a SOCMI unit. This could have resulted in numerous non-SOCMI process units, such as pharmaceutical units, being designated SOCMI and being subject to the SOCMI Wastewater NSPS. The proposal addresses this by establishing the 50 percent threshold. Although this change will reduce the number of CPU affected by the rule, it more accurately reflects the SOCMI source category.

EPA believes that making the SOCMI Wastewater NSPS as much like the HON as possible will facilitate implementation of the rule. The HON and the SOCMI Wastewater NSPS will regulate the same types of process units and treatment processes, and in some cases, the same process units and treatment processes. Thus, the primary product concept was adopted for the proposal.

Today's revisions use expected annual production as the basis for determining the mass for each product. Expected annual production is proposed instead of annual design capacity to accommodate CPU designed and operated to manufacture more than one chemical. Typically these facilities are contract manufacturing facilities, also known as tolling or multi-purpose facilities or flexible operations facilities. Using expected annual production allows a facility to more closely represent actual production rather than basing the primary product decisions for each chemical on annual design capacity. The facility would also have to report the CPU's annual design capacity. However, EPA is concerned whether this approach creates potential burden for regulating agencies and requests comment on whether expected production or design capacity should be used.

4. Designated CPU Must Have Been Constructed, Reconstructed or Modified After September 12, 1994

To be subject to this proposed rule, a designated CPU must have been constructed, reconstructed, or modified after September 12, 1994.

5. Affected Facility Must Generate a Process Wastewater, a Maintenance Wastewater, and/or an Aqueous In-Process Stream for Control Requirements To Apply

In the original proposal, an affected facility had to be a process unit that generated wastewater. ''Wastewater'' included process wastewater and maintenance wastewater. Today's revised proposal removes ''generating wastewater'' as a criteria for determining applicability.

This change to the applicability determination was done for two reasons. First, to remove maintenance wastewater from triggering applicability of the rule to a designated CPU. Maintenance wastewater is generally more difficult to quantify and EPA believes is a less significant source of VOC emissions than process wastewater for this source category. Second, in the September 1994 proposal, ''wastewater'' was defined as ''an organic containing water . . .,'' without regard to the concentration of VOC in the wastewater. Today's revised proposal, adds a concentration of 50 part per million, by weight, (ppmw) into the wastewater definition. Thus, low concentration wastewater streams that would have triggered applicability in the original proposal would not do so with the revised wastewater definition. EPA intends that a designated CPU that is

new or reconstructed or modified after September 12, 1994 and that is part of a CPU that produces SOCMI as its primary product control process wastewater streams, maintenance wastewater streams, and aqueous in-process streams when the streams are generated.

EPA recognizes that affected facilities that do not generate wastewater or aqueous in-process streams should not be subject to all the reporting and recordkeeping requirements. Therefore, EPA has specified that affected facilities that do not generate process wastewater streams, maintenance wastewater streams, or aqueous in-process streams are exempt from most of the provisions of the subpart. If the affected facility began generating a process wastewater stream, a maintenance wastewater stream, or aqueous in-process stream, it would have to comply with all applicable provisions of the subpart at the time of the change.

6. Applicability of Part 60 and Part 63 General Provisions

Today's proposal adds table 2 and table 2A, which clarify the 40 CFR part 60 and part 63 general provisions that apply to this rule. There was a need for selected part 63 general provisions to apply to this part 60 rule because the part 60 general provisions do not contain certain provisions that were used by the HON and are necessary for compliance with this rule. The applicable part 63 general provisions pertain to the start-up, shutdown, and malfunction plan, performance testing requirements, control device requirements, and delegated authority.

B. Date of Compliance

In October 1995 the Agency proposed to allow modified sources undergoing significant capital improvements an additional three years to come into compliance with the SOCMI Wastewater NSPS. The additional time would have been subject to the Administrator's approval and would have required documentation of the need for more time.

Today's revised proposal would require that all affected facilities be in compliance with the NSPS no later than initial start-up of an affected facility or promulgation of the rule, whichever is later.

In response to the September 1994 proposal, several commenters wrote that the applicability and compliance provisions were unclear making it difficult for them to implement any requirements. In addition, EPA recognizes that some facilities may require several months or years lead time to complete large capital projects such as retrofitting sewers and designing and installing steam strippers. Facilities need time to determine whether the rule applies to them, familiarize themselves with the rule, choose a compliance option, design the necessary equipment, and construct and renovate as needed.

To provide time for facilities that commenced construction, reconstruction, or modification between September 12, 1994 and the promulgation date, EPA is proposing to promulgate this rule no earlier than spring 2000. Appendix J to part 60 may be promulgated earlier.

Facilities commencing construction, reconstruction, or modification after the promulgation date will be required to be in compliance upon initial start-up. As is the case under all other NSPS, facilities will have to plan ahead to complete any necessary construction at a facility so as to be in compliance with the NSPS upon start-up of operations.

Today's revised proposed rule would limit modifications to changes costing 12.5 percent or more of the cost of the existing facility. This is discussed in section V. of this preamble. Because the cost test precludes relatively smaller changes from triggering the NSPS, only larger projects will be modifications. The larger projects take more time to plan and implement, giving the facility time to plan for compliance. Therefore, the facilities that become modified after the promulgation date will have adequate notice of the requirements and sufficient time to plan for compliance.

IV. Revisions to the Definitions (§ 60.771)

A. Overview of Changes to the Definitions

1. Definitions Added

Significant changes were made to the definition section of the rule. The following definitions were added to § 60.771: aqueous in-process stream; automated monitoring and recording system; chemical process unit; closed biological treatment process; designated chemical process unit or designated CPU; enhanced biological treatment system or enhanced biological treatment process; flexible operation unit; Fbio; Fe; Fr;, Fr; fuel gas; fuel gas system; incinerator; initial start-up; modification; non-automated monitoring and recording system; on-site or onsite; open biological treatment process; petroleum refining process or petroleum refining process unit; plant site; point of determination; product; recapture device; recovery device; research and development facility; shutdown; specific gravity monitoring device; start-up; start-up, shutdown, and malfunction plan; steam jet ejector; storage vessel; tank drawdown; unit operation; volatile organic compound or VOC; and wastewater tank.

2. Definitions Removed

The following definitions were removed from § 60.771: mass flow rate, operating parameter value, point of generation, process unit, process unit shutdown, tank, and volatile organic concentration.

3. Definitions Changed

The following definitions were changed: annual average concentration, annual average flow rate, boiler, closed-vent system, container, continuous record, continuous recorder, continuous seal, control device, cover, duct work, flame zone, flow indicator, hard-piping, individual drain system, oil-water separator or organic water separator, process wastewater, residual, sewer line, temperature monitoring device, treatment process, waste management unit, wastewater, and wastewater seal controls. Most of these revisions were to make the definitions in today's proposed rule consistent with those in the HON.

B. Significant Definitional Changes

Significant definitional changes proposed are as follows: revisions to the ''wastewater'' definition; revisions to the ''product'' definition; replacement of the ''point of generation'' (POG) definition with ''point of determination'' (POD) definition; addition of ''closed'' and ''open biological treatment process'' definitions; addition of the ''enhanced biological treatment system'' definition; revisions to the ''individual drain system'' definition; and, revisions to the ''VOC'' definition.

The definitions of ''wastewater,'' ''recovery device,'' and ''point of generation'' were revised to clarify EPA's intent concerning which VOC-containing waters are in-process fluids regulated by the provisions in § 60.775 and which are wastewater and regulated by the provisions in § 60.773 and § 60.779 through § 60.783.

1. Revised Wastewater Definition

The most significant change proposed today to the ''wastewater'' definition is the addition of the concept of ''discard.'' This concept is fundamental to distinguishing which fluids exiting the CPU are subject to the SOCMI Wastewater NSPS provisions in § 60.773. Adding ''discard'' to the definitions provides a clear demarcation

between those fluids no longer useful to that production process, i.e., discarded, and those fluids that add value to that production process. Together with the point of determination and aqueous in-process stream concepts, the revised definition of wastewater makes it easier for facilities and regulatory authorities to implement the rule.

2. Replaced Point of Generation With Point of Determination

Today's revised proposal changes the definition of ''point of generation'' to ''point of determination.'' The change is to reflect a conceptual difference. ''Point of generation'' was defined in the September 1994 proposed rule as ''the location where process wastewater exits the process unit equipment.'' In today's revised proposal, it has been replaced by ''point of determination'', which is defined as ''each point where the process wastewater exits the chemical process unit,'' often the last recovery device. The need for and significance of this change is discussed in more detail in section VI.B. of this preamble.

3. Recovery Device

Today's revised proposed rule includes a revised definition of ''recovery device.'' The proposed definition of ''recovery device'' differs from the existing definition in order to reflect the revised approach to the definition of ''wastewater'' and to reflect the fact that deviations from normal operations do occur. This was discussed in the HON preamble of August 26, 1996 (61 FR 43710).

The revised definition of ''recovery device'' is intended to eliminate the potential for sham transactions involving the ''sale'' of wastewater by limiting the concept of sales to sales for the same general purposes for which chemicals may be recovered and used within the facility (i.e., use, reuse, or burning as fuel). The EPA believes that the revised definition is broad enough to encompass any sale that is not a sham since ''use'' and ''reuse'' are very general concepts. The definition also differs from the existing definition in that the word ''normally'' now modifies the phrase ''used for the purpose of recovering. . . .'' This change was made to recognize that occasional exceptions to normal usage can and will arise.

4. Added Definitions for Closed Biological Treatment Process, Open Biological Treatment Process, and Enhanced Biological Unit

Definitions for closed biological treatment process, open biological treatment process, and enhanced biological treatment system were added to the definitions in § 60.771. The new definitions are necessary to make distinctions among biological treatment processes which allow the incorporation of more flexible and less burdensome compliance demonstrations for some facilities. This is discussed in more detail in the discussion of changes to § 60.783 in section XI. of this preamble.

5. Modified Individual Drain System Definition

The definition for individual drain system would be modified to clarify three key concepts and incorporate minor wording changes. The definition in today's proposal would clarify that only stationary systems are included in the definition; that individual drain systems are used to convey residuals as well as wastewater streams; and that the individual drain system does not include in-process equipment as described in § 60.775.

6. Modified VOC Definition

VOC, for the purposes of this subpart, are defined to be those substances already defined as volatile organic compounds in 40 CFR section 51.100(s) and that are not excluded or exempted by that section, except that any substance with a Henry's law constant less than or equal to 0.1 y/x atmosphere per mole fraction as determined according to Appendix J of this subpart is not a VOC for the purposes of this subpart.

This definition of VOC reflects EPA's belief that chemicals with lower Henry's law constants are not a significant source of VOC emissions from wastewater. A Henry's law constant of 0.1 y/x at 25°C is similar to the lowest Fe value for the HAP controlled by the HON. In selecting which compounds to control, EPA also considered a compound's biodegradability and Fr value. In general, lower volatility compounds are already significantly biodegraded and are not removed to a significant extent by steam stripping.

V. Revisions to Requirements for Determining Modification (§ 60.772)

1. Modification

Today's proposed rule revises § 60.772 to clarify how to determine whether a designated CPU has been modified such that it is subject to the SOCMI Wastewater rule. The revisions add a definition of ''modification'' in § 60.771; clarify that the designated CPU is used as the basis of modification determinations; provide exclusions to modification; and, provide procedures to determine increases from process wastewater and aqueous in-process streams.

Modification, as defined in § 60.771, means ''any physical change in, or change in the method of operation of, an existing designated CPU which increases or creates emissions to the atmosphere of VOC from process wastewater and/or aqueous in-process streams generated by the designated CPU, except as provided in § 60.772(c).'' This definition supersedes for the purposes of subpart YYY the definition in § 60.2 of the General Provisions to 40 CFR, part 60. The proposed definition incorporates the concept that only process wastewater and aqueous in-process streams are considered for modification determinations; maintenance wastewater is not considered. It also states that the basis of the modification is the designated CPU, making the modification provisions consistent with the applicability provisions for subpart YYY.

Today's revisions also replace the exclusions to what constitutes a modification in § 60.14(e) of the general provisions with four exclusions. Three of these are similar to exclusions provided by § 60.14(e)—maintenance, repair, and replacement, including replacement of spent catalyst with the same catalyst; increase in hours of operation; and, relocation or change in ownership of an existing facility.

The fourth exclusion is for changes that cost less than 12.5 percent of the cost of the existing designated CPU. This concept is also used in the SOCMI rule for equipment leaks, subpart VV to part 60. It is meant to encompass any change, including, an increase of production rate, environmental control, and bottleneck removal. One reason a percent cost exclusion was added is in recognition that SOCMI equipment routinely undergoes small changes and that EPA does not intend small changes to constitute a modification for this rule. Another reason is that this exclusion provides a clear and simple statement of what is not a modification. EPA chose 12.5 percent because 12.5 percent was used in the SOCMI rule for equipment leaks, subpart VV to part 60. In addition, the General provisions to part 60 use the 12.5 percent level in an exclusion for an increase in production rate (see § 60.14(e)(2), § 60.14(2), definition of ''capital expenditure, and Internal Revenue Service Publication 534). When two or more physical or operational changes are reasonably viewed as a project, the cost of the entire project should be considered when determining the 12.5 percent.

Today's proposed revisions add provisions for determining whether an increase in VOC emissions from process

wastewater or aqueous in-process streams has occurred or will occur. The proposed provisions make a distinction between flexible operations units and non-flexible operations units. The flexible operations units, which manufacture more than one product, choose one product as a baseline against which to compare emissions that occur due to changes. This approach was outlined in a memo entitled ''Clarification of Methodology for Calculating Potential to Emit (PTE) for Batch Chemical Production Operations' which was issued by John S. Seitz, the director of EPA's Office of Air Quality Planning and Standards, to the 10 EPA Regional Offices on August 29, 1996.

For both flexible operation units and non-flexible operation units, the owner or operator would calculate VOC emissions before and after a physical or operational change. The owner or operator may elect to determine the amount of VOC emissions by calculating VOC mass flow rate in the wastewater as a surrogate for VOC emissions or by calculating VOC emissions using a fraction emitted, Fe, value. The Fe value may be either a default Fe value or a site-specific Fe value. The default Fe values are listed in Table 2 of the proposed appendix J to this part. The site-specific Fe values are determined according to the procedures and forms specified in the proposed appendix J to this part.

Once the VOC mass flow rate or VOC emissions have been determined both before and after the change, they must be compared to determine whether the change caused an increase in VOC emissions to the atmosphere. When emissions are determined using mass flow rate as a surrogate for emissions, the VOC mass flow rate before the change for all process wastewater streams affected by the change are compared to the VOC mass flow rate after the change for all process wastewater streams affected by the change. The same comparison is done for aqueous in-process streams. If either comparison, i.e., the process wastewater comparison or the aqueous in-process streams comparison, demonstrates that VOC mass flow rate has increased after the change, the designated CPU is modified and becomes an affected facility. In contrast, when emissions are determined using Fe values, the sum of all affected process wastewater streams and all affected aqueous in-process streams before the change are compared to the sum of all affected aqueous in-process streams and all affected process wastewater streams after the change.

2. Reconstruction

Today's revisions clarify when costs begin accumulating for purposes of reconstruction, clarify the accumulation period, and add a requirement for documentation. The reconstruction of an affected facility subjects it to the NSPS because the replacement of the components of an existing facility eventually results in a new facility. The general provisions to 40 CFR, part 60 sets the level of replacement that constitutes reconstruction at 50 percent or greater of the cost of constructing a comparable new facility. EPA is proposing that the first day replacement costs for actual work, i.e., dismantling of equipment or construction, on the facility are incurred, the costs are ''charged'' to the designated CPU for the purpose of determining reconstruction. When replacement of components is reasonably viewed as a project, the cost of the entire project would be charged to the first day expenses were incurred. All replacement costs must be counted toward the reconstruction cost, regardless of whether costs arise from different projects.

The September 12, 1994 proposal set a time period of two years as the period that project costs should be aggregated and counted toward reconstruction. Today's notice clarifies that the two year period is a rolling two year period. A rolling two year period is not based on a specific set of dates. A rolling two year period allows any day to be used as the beginning point for the two year period. Thus, the two year period can be considered to any 730 consecutive days. The rolling two year period should be examined to see if all combined replacements to the facility cost 50 percent or more of the cost of constructing a new facility that would be comparable in cost to the existing facility. The cost of all projects incurred within a two year period would be added together.

VI. Revisions to the General Requirements for Process Wastewater (§ 60.773)

The EPA is proposing changes to the general process wastewater provisions in § 60.773. These provisions provide instructions on how to determine if a process wastewater stream requires control and the general outline of requirements for process wastewater streams. These changes are consistent with the changes made to the wastewater provisions in the HON rule. Significant changes proposed include the following: requirements for determining whether wastewater streams require control by determining Group 1 or Group 2 status, replacement of point of generation with point of determination, addition of prohibition of discarding certain organic material into water or wastewater, and the addition of off-site treatment requirements. The off-site treatment provisions require that an owner or operator may only ship to a facility that has certified that it will treat the wastewater to the standard required by the rule.

A. Group 1/Group 2 Status Determination

The EPA is proposing using Group 1 and Group 2 terminology to determine whether a process wastewater stream requires control for VOC. Determination of whether a process wastewater stream is Group 1 or Group 2 is based on annual average concentration and flow rate criteria. Control requirements for Group 1 wastewater streams require that VOC emissions be controlled until the VOC are either removed from the wastewater or destroyed. Group 2 wastewater streams are required to comply with certain recordkeeping and reporting requirements. The proposed control criteria of 500 ppmw at a flow rate of 1 liter per minute (lpm) or 10,000 ppmw at any flow rate have not changed.

B. Change From Point of Generation to Point of Determination

Today's revised proposed rule predicates the determination of the applicability of control requirements to a wastewater stream on its characteristics at the point where the wastewater stream exits the last piece of processing equipment. The new location for determining the characteristics of a wastewater stream is being called the point of determination (POD) to distinguish it from the POG concept used in other air rules for waste and wastewater such as the Benzene Waste NESHAP. In instances where the wastewater stream exits the process equipment and is not sent to a recovery device that recovers chemicals for fuel value, use, reuse, or for sale (for fuel value, use, or reuse) the POD would be the same as the POG location. The POD concept proposed for this rule is the same as used in the HON.

The EPA's intent in developing the POD approach is to have a clear decision criterion that specifies the location for evaluation of a wastewater stream for the purposes of control. The POD encompasses each point where process wastewater exits the last piece of process equipment, often the last recovery device. There can be multiple POD associated with a CPU or

designated CPU. This proposed definition of POD would allow a facility to recover chemicals for fuel value, use, reuse or for sale (for fuel value, use, or reuse). As with the POG, under the POD approach owners and operators would not be allowed to mix streams together for the purpose of escaping compliance by the diluting of wastewater streams. Under the POD approach, process units conveying process fluids in the chemical process unit are subject to the requirements established in Table 6 of the rule. Table 6 is consistent with the suppression requirements for a wastewater stream requiring control. Again, the intent is to allow process fluids that have recovery potential to be sent to recovery devices; however, these fluids are required to be managed to limit VOC emissions to the atmosphere. Process fluids that do not have recovery potential are considered wastewater streams at the point where the stream exits the process equipment. A more detailed discussion is available in section IV.D. of the HON preamble published on August 26, 1996 (61 FR 43698).

C. Prohibition of Discarding Certain Organic Materials into Water or Wastewater

Language that prohibits discarding of certain organic material into water or wastewater has been added to § 60.773. Specifically, liquid or solid organic materials containing greater than 10,000 parts per million of VOC may not be discarded into water or wastewater unless the receiving stream is managed and treated as a Group 1 wastewater stream. The prohibition would exclude equipment leaks; activities included in maintenance or start-up/shutdown/malfunction plans; spills; and samples. This paragraph was added to ensure that high concentration organic streams, such as off-specification product, are discarded only to individual drain systems and treatment processes meeting the requirements for Group 1 wastewater streams.

D. Addition of Off-Site or Third-Party Treatment Requirements

Today's proposed rule would allow owners and operators to transfer Group 1 wastewater streams or residuals off-site for treatment provided the transferee certifies to EPA (and provides a copy to the owner or operator) that it will manage and treat the wastewater streams or residuals in accordance with this rule's provisions. These provisions were revised to provide a means to allow transfers of treatment responsibility without holding the owner or operator responsible for the actions of another and are consistent with the HON provisions.

VII. Revisions to Requirements for Wastewater Tanks, Surface Impoundments, Containers, Individual Drain Systems, and Oil-Water Separators (§ 60.774)

Today's revised proposed rule adds additional compliance options for wastewater tanks, surface impoundment, containers, individual drain systems, and oil-water separators. The six compliance options that may be selected are as follows: HON, part 63, subparts F and G; Standard-standards, part 63, subparts QQ, PP, RR, and VV; Petroleum Refinery, part 60, subpart QQQ; RCRA, part 264, subpart CC; RCRA, part 265, subpart CC; and Benzene Waste, part 61, subpart FF.

Table 3 was added to today's revised proposed rule in order to indicate which of the six compliance options may be used as a control option for wastewater tanks, surface impoundment, containers, individual drain systems, and oil-water separators. Table 5 was added to today's revised proposed rule in order to identify the control requirements, monitoring provisions, recordkeeping provisions, reporting provisions, control device provisions, leak detection provisions, and delay of repair provisions for each of the six compliance options.

As shown in Table 3, the owner or operator must comply with the control requirements for one of the six compliance options. If an owner or operator has a waste management unit that is subject to any of the six compliance options, then the owner or operator may choose to comply with the delay of repair provisions, monitoring provisions, recordkeeping provisions, reporting provisions, control device provisions, and leak detection provisions in the selected compliance option or in this subpart. If an owner or operator was not subject to the control requirements for any of the six compliance options, then the owner or operator must comply with the delay of repair provisions, monitoring provisions, recordkeeping provisions, reporting provisions, control device provisions, and leak detection provisions of this subpart.

VIII. Addition of Requirements for Control of Certain Aqueous In-Process Streams (§ 60.775)

The revisions adding a new § 60.775 and Table 6 are an outgrowth of the change from the point of generation (POG) concept of the September 1994 rule to the point of determination (POD) concept in these revisions. As discussed in Section XI. of this preamble, the point of the determination concept is replacing the point of generation concept. The purpose of this new section is to ensure that VOC-containing fluids are properly managed in closed systems. Table 6 lists the applicable requirements for a drain or drain hub, manhole, lift station, trench, oil-water separator, and a tank.

In developing the point of determination approach, the EPA assumed that fluids containing organic compounds within the process would be managed in closed systems to minimize losses of a recoverable material. The provisions in Table 6 and the new § 60.775 were designed to ensure that conveyance and handling of process fluids containing volatile organic compounds would be handled in a manner consistent with the requirements for wastewater streams subject to control.

IX. Addition of Requirements for Maintenance Wastewater (§ 60.776)

The EPA is proposing changes to the maintenance wastewater requirements in the proposed rule. In the September 1994 proposal, maintenance wastewater and process wastewater were subject to the same provisions in § 60.773 and § 60.779. The maintenance wastewater provisions, which can now be found in § 60.776 of the rule, were changed to be consistent with the HON maintenance wastewater provisions. The provisions require the owner or operator to provide a description of their procedures for managing wastewater generated from the emptying and purging of equipment in the process during temporary shutdowns for inspections, maintenance, and repair and during non-shutdown periods such as routine maintenance. A description of these procedures will be included in a facility's start-up, shutdown, and malfunction plan.

X. Addition of Requirements for Determining Stream-Specific List of VOC (§ 60.778)

Today's revised proposed rule provides a procedure that would allow a facility to develop a stream-specific list of VOC. The stream-specific list of VOC could be used to estimate changes in emissions for modification determinations, to make Group 1 and Group 2 determinations, and to make compliance demonstrations. EPA believes adding these provisions provides flexibility without sacrificing compliance assurance. EPA is proposing to add these requirements as § 60.778.

A. Group 1 and Group 2 Determinations and Modification Determinations

When a stream-specific list of VOC is needed to make a Group 1 determination, the owner or operator must identify up to 75 chemicals (those with the greatest mass). The chemicals on the stream-specific list must represent at least 90 percent of the total VOC in the process wastewater stream. Chemicals with a concentration less than 1 ppmw can be excluded from the list. Method 25 D in appendix A to part 60 must be used when at least 90 percent of the total VOC in the wastewater stream cannot be identified. The same procedures are used when a stream-specific list of VOC is needed to estimate changes for modification determinations.

B. Compliance Determinations

When a stream-specific list is needed to make a compliance determination, three cases exist. The first case is when an owner or operator knows at least 90 percent of the total VOC in the wastewater stream. In this case, each chemical that has a mass of 5 percent or greater, must be included on the list. If less than half of the total VOC in the wastewater stream are represented by chemicals with a mass of 5 percent or greater, each chemical, up to 75 chemicals, must be on the stream-specific list. The second case is when an owner or operator knows at least 50 percent of the total VOC in the wastewater stream. In this case, the chemicals with the greatest mass that can be identified up to 75 chemicals are required to be included on the stream-specific list. For both of these cases, the owner or operator must: (1) ensure the stream-specific list of VOC is adequate to demonstrate compliance, and (2) document the method used to determine concentration and total VOC in the wastewater stream.

The third case is for all other streams. An owner or operator who cannot identifiy at least 50 percent of the total VOC in the wastewater stream must choose a compliance option that does not require speciation. Three compliance options do not require speciation: (1) the design steam stripper option (§ 60.779(d)); the 95 percent and outlet reduction of 50 ppmw mass removal/destruction option for nonbiological treatment process (§ 60.779(e)(2)); and, the steam stripper three compound option (§ 60.779(e)(3)).

XI. Revisions to Requirements for—Performance Standards for Process Wastewater (§ 60.779)—Procedures for Determining Which Process Wastewater Streams Require Control (§ 60.782)—Procedures for Determining Compliance (§ 60.783)

A. General

Three sections of today's proposed rule, §§ 60.779, 60.782, and 60.783, were revised to incorporate the point of determination concept and to add flexibility in the compliance demonstration for facilities using biological treatment processes to meet the requirements of subpart YYY. These revisions are based mostly on the HON. Revisions to § 60.782 include the addition of methods and an alternative validation procedure. The three sections referenced above are discussed together because a change made to one has generally also been made to the other sections. A specific change will be discussed where it first appears or has the most impact.

B. Changes to § 60.779, Process Wastewater Provisions—Performance Standards for Treatment Processes Managing Group 1 Wastewater Streams and/or Residuals Removed From Group 1 Wastewater Streams

Section 60.779 contains provisions for control of Group 1 wastewater streams and residuals from Group 1 wastewater streams. The most significant changes proposed to § 60.779 are: adoption of the Group 1/Group 2 terminology from the HON; deletion of the recycling control options; clarification on how to use speciated options within the existing compliance option framework; technical corrections to the design steam stripper specifications and removal of unnecessary specification of steam quality; clarification of compliance demonstration procedures that may be used for biological treatment processes; clarification that treatment in series is allowed; addition of provisions for a 1 megagram facility-wide exemption; and clarification of when design evaluations may be used to demonstrate compliance instead of performance tests.

1. Deletion of Recycling Options From § 60.779

The recycling option is unnecessary under the POD concept which replaces the POG concept. The recycling option allowed an owner or operator to achieve compliance by recycling a process stream to a process unit. The recycling provisions in paragraph (d) of the September 1994 proposed rule would have required that the wastewater or residual not be exposed to the atmosphere and that waste management units in contact with the wastewater streams or residual comply with control and inspection and monitoring requirements. With the proposed point of determination concept, the recycling option would become redundant because as long as a fluid stays in the process, it would not be a wastewater subject to the provisions of § 60.779; instead, it would be an aqueous in-process stream subject to the provisions of § 60.775.

2. Addition of Simplified Compliance Demonstration for Steam Strippers

Today's revisions include a compliance option for steam strippers that bases compliance on three VOC—methanol, ethylene glycol monobutyl ether acetate, and methyl ethyl ketone. This compliance option requires that the Fr value, expressed as a percentage, be achieved for each of the three compounds. This simplifies compliance demonstration by requiring a demonstration for three compounds instead of up to 75 compounds. This option could be used by a facility without identifying the compounds in the wastewater stream that are going to the steam stripper.

The EPA has defined design and operating specifications for a steam stripper, called the design steam stripper. The design steam stripper is the basis of the wastewater control requirements. Other steam strippers may provide equivalent or superior performance to the design steam stripper. Equivalent performance to the design steam stripper can be demonstrated based on compounds not present in the wastewater stream.

EPA chose methanol, ethylene glycol monobutyl ether acetate, and methyl ethyl ketone because they cover a range of volatilities. Methanol is only partially removed by the design steam stripper, and methyl ethyl ketone is removed at levels greater than 95 percent. The methanol removal is used to verify the steam rate. The methyl ethyl ketone removal is used to verify the separation performance of the steam stripper. The Henry's law constant of ethylene glycol monobutyl ether acetate is in between the Henry's law constant of methanol and methyl ethyl ketone. Consequently, the percent of ethylene glycol monobutyl ether acetate removed by the steam stripper should be in between the percents removed for the other two compounds. This helps provide verification of steam stripper performance.

When design evaluations are used to demonstrate compliance, the design

evaluation is based on the three compounds. The proposal specifies Henry's law constants at a 100 °C, expressed in atmosphere per mole fraction, that must be used in the design evaluation. These Henry's law constants and the Fr values for each compound are listed in Table 2 of this preamble.

Any computer model that can be used for accurate prediction of the steam stripper system of concern can be used. Depending on the complexity of the steam stripper system, some computer models may not be appropriate. Some examples of computer model failures include particulate buildup in the column, lack of ability to predict liquid phase separation, inability to partition compounds into oil and emulsified oil, and inadequate thermodynamic properties for the system of interest.

TABLE 2.—THREE COMPOUNDS USED FOR NEW COMPLIANCE OPTION AND ASSOCIATED HENRY'S LAW CONSTANTS AND FR VALUES

Compound	Fraction removed (Fr value)	Henry's law constant at 100° C (atm per mole fraction)
Methanol	0.31	7.73
Ethylene glycol monobutyl ether	0.76	24.96
Methyl ethyl ketone	0.95	59.2

When performance tests are used to demonstrate compliance, if the wastewater stream entering the steam stripper does not contain all three compounds, the wastewater stream must be spiked so that the percent removal of the compounds can be determined.

Today's revisions include two other compliance options that do not require speciation. They are the 95 percent mass removal with an outlet VOC concentration of 50 ppmw option and the design steam stripper option. EPA is aware that some in the regulated community are working to develop a nonspeciated method to demonstrate compliance with biological treatment units. If this procedure is demonstrated to be effective, EPA will consider adding it to these provisions.

3. Clarification That Treatment in Series is Allowed

The September 1994 proposed rule intended that more than one treatment process could be used to comply with the rule. Today's revised proposed rule explicitly provides for treatment in series in §§ 60.779 and 60.783 and clarifies EPA's intent on this issue. Although all Group 1 wastewater streams or residuals must be conveyed in controlled individual drain systems, treatment in series may be used whether or not treatment processes are connected by hard-piping. However, inlet and outlet mass flow rate determination for compliance demonstration differ, depending on whether hard-piping is used to connect treatment processes and whether a biological treatment process is part of the series.

4. Revised Provisions for the One Megagram Source-wide Exemption

The provisions for the 1 megagram option were clarified and revised and were moved from § 60.770 into § 60.779. In the September 1994 proposed rule, the 1 megagram exception could have been applied to each affected process at the plant site. The 1 megagram exemption in today's revised proposed rule is a source-wide exemption that is to be shared among affected facilities at the plant site. This change makes the rule more consistent with the HON.

C. Alternative Methods to Method 25D Used in § 60.782

Today's revised proposed rule would allow use of alternative methods for Group 1 or Group 2 determinations for process wastewater streams in lieu of Method 25D for all compliance options. The EPA reviewed Methods 624, 625, 1624, and 1625 and has determined that these methods may be used with certain additional requirements. These requirements are specified in § 60.782(b) of today's proposed rule. Other methods may be used if they are validated by the Method 301 validation procedure. EPA's review of these methods was discussed in section IV.F. of the HON preamble of 26 August 1996 (61 FR 43698).

D. Changes to § 60.783, Process Wastewater—Test Methods and Procedures To Determine Compliance

Section 60.783 indicates how to demonstrate compliance with the performance standards in § 60.779. Several significant changes are proposed to this section.

1. Reorganization of § 60.783

In today's proposal, three clarifications to § 60.783 are of particular note: (1) conditions under which a performance test or design evaluation is allowed or under which neither is required are specified in paragraphs (a)(1) and (a)(2); (2) new paragraphs (a)(3)–(a)(7) specify the following performance test and compliance determination guidance: performance tests and compliance determinations are to be conducted according to 63.7(a) of subpart A of 40 CFR part 63 and this subpart, the Administrator should be notified of the intention to conduct a performance test at least 30 calendar days before the performance test is scheduled, certain operating conditions apply when conducting tests, data should be reduced and validated, and how to apply for a performance test waiver; and (3) ''representative operating conditions'' for treatment processes and control devices are specified in paragraphs (a)(8) and (a)(9) of § 60.783. The reorganized section would also make provisions for measuring concentration and flow rate consistent throughout the section.

2. Demonstrating Compliance for Biological Treatment Processes and Addition of ''Enhanced Biological Treatment Process'' Concept

Today's revised proposed rule would add paragraph (h) which (1) describes how to determine the site-specific fraction of VOC biodegradated (Fbio); (2) clarify that biological treatment processes must use one of the required mass removal options to comply with the rule; (3) add flexibility in demonstrating compliance for biological treatment processes; and (4) add provisions that allow a subset of VOC to be used to demonstrate compliance.

Paragraph (h)—how to determine Fbio—is added to make the provisions easier to locate. In addition, § 60.783(h), together with appendix C to part 63, provide more flexibility to the owner or operator to demonstrate compliance for biological treatment processes. The September 1994 proposed rule required owners and operators using biological treatment processes to demonstrate compliance using appendix C to part 63 to determine Fbio. Today's revisions recognize that for some biological treatment processes, those EPA has designated ''enhanced biological treatment processes,'' a less rigorous determination of Fbio is sufficient to demonstrate compliance. This concept is discussed below.

When a biological treatment process is used, one of the required mass removal options, § 60.779(f) or (g), must be chosen as the compliance option. The provisions that may be used to demonstrate compliance depend on whether the biological treatment process is open or closed. In each case, the proposed rule specifies which compliance demonstration provisions may be used.

For open biological treatment processes, volatilization is an important

concern. Therefore, to demonstrate compliance, the owner or operator must determine the mass of VOC that are removed due to biodegradation rather than volatilization. If the open biological treatment process is an enhanced biological treatment process, the source would have more flexibility in demonstrating compliance.

3. Performance Requirements for Open Biological Treatment Processes

Today's revised proposed rule lists 24 compounds in Table 14. This list of compounds would be used together with other provisions to specify how the source may demonstrate compliance. Table 14 may only be used for wastewater streams treated in an enhanced biological treatment system as defined by the proposed revisions to the rule. The basis of the list is discussed in detail in the HON preamble of 26 August 1996 (61 FR 43698), in the HON preamble of January 17, 1997 (62 FR 2722), in the HON preamble of August 22, 1997 (62 FR 44608), and in Docket A–90–23.

A performance demonstration would not be required for enhanced biological treatment systems that receive wastewater streams that require control and that contain only Table 14 compounds. An example would be an activated sludge unit that meets the proposed enhanced biological treatment system definition and treats Group 1 wastewater streams that contain only methanol and nitrobenzene (proposed Table 14 compounds). For enhanced biological treatment systems treating wastewater containing compounds other than those on proposed Table 14, a performance demonstration is required.

Today's revisions offer several techniques for demonstrating compliance for an open biological treatment unit meeting the proposed definition of an enhanced biological treatment system. The demonstration is performed by estimating the Fbio for the system using the first order biodegradation constant (K1) and the forms in appendix C to part 63. The owner or operator may use any of the procedures specified in 40 CFR part 63, appendix C to calculate the site-specific K1s for VOC. The owner or operator may elect not to calculate site-specific biodegradation rate constants but instead to calculate Fbio for the Table 14 compounds using the defaults for K1s in Table 14 and to follow the procedure explained in Form IIA of appendix C. For all other VOC treated in a unit meeting the definition of ''enhanced biological treatment system,'' the owner or operator is allowed to use any of the procedures specified in 40 CFR part 63, appendix C, to calculate the site-specific K1. Biological treatment units not meeting the definition of an enhanced biological treatment system are allowed to determine the Fbio using the site-specific K1 values determined by any of the procedures in appendix C to part 63 except procedure 3 (inlet and outlet concentration measurements).

The EPA believes that today's proposed revisions to the biological treatment option adds additional flexibility without sacrificing reduction of emissions. By separating VOC into the proposed Table 14 compounds and all other VOC and allowing different performance requirements depending on the properties of the compounds on proposed Table 14, additional options have been made available to the owner/operator. The flexibility allowed by not requiring that the site-specific fraction biodegraded be determined for all VOC in the wastewater stream is predicated on the underlying assumption that the wastewater is treated in an enhanced biological treatment system.

4. Meaning of Enhanced Biological Treatment Unit

The definition of ''enhanced biological treatment system or enhanced biological treatment process'' is intended to reflect the basis for the simplified compliance approach for some systems. The list of compounds in Table 14 were developed by modeling performance of an activated sludge system that was a thoroughly mixed biological treatment unit (Docket number A–90–23, item VII–B–8). The definition of enhanced biological treatment process includes a description of a ''thoroughly mixed treatment unit.'' ''Thoroughly mixed treatment unit'' is intended to convey the concept of an activated sludge system that is designed and operated to approach or achieve the characteristics of a completely back mixed system. Because the EPA does not intend the definition to only allow systems with perfect uniformity in characteristics, a ''thoroughly mixed treatment unit'' would be described as a unit that is ''designed and operated to approach or achieve uniform biomass distribution and organic compound concentration throughout the aeration unit by quickly dispersing the recycled biomass and the wastewater entering the unit.'' This description is intended to recognize that well-designed complete mix systems may still have small insignificant stagnant zones or other minor deviations from complete mixing. The meaning of enhanced biological treatment system in this subpart is meant to be exactly the same as its meaning in the HON.

The EPA realizes that many units have varying degrees of uniformity in biomass distribution and organic compound concentration throughout the biological unit. The EPA is developing additional information to assist in determining whether a biological treatment unit is thoroughly mixed and meets the enhanced biological treatment system definition. When finished, the additional information will be available from the Air and Radiation Docket and Information Center and on the EPA's Technology Transfer Network (TTN).

5. Equations in § 60.783

Many of the equations in § 60.783 were revised to make mathematical corrections or to make the equations consistent with the rest of the rule and with the HON. The terms in the equations were changed to make them consistent as well.

6. Compounds not Required To Be Considered in Performance Tests

Today's revised proposed rule adds § 60.783(a)(6) which specifies when compounds can be excluded from in a performance test. These provisions were added because EPA recognizes that not all VOC are present in a wastewater stream; and not all compounds need to be measured to demonstrate compliance, i.e., measuring a predominant compound may be enough to show the mass removal necessary to achieve compliance. These provisions would also provide that compounds present at concentrations less than 1 ppmw at the POD or compounds present at the POD at concentrations less than the lower detection limit where the lower detection limit is greater than 1 ppmw may be excluded from the performance test. This provision was added to avoid imposing an unnecessary analytical burden.

XII. Revisions to Requirements for Delay of Repair (§ 60.777) and Control Devices (§ 60.780)

Today's revised proposed rule changes the control device provisions in § 60.780. The delay of repair provisions previously included in this section have been moved to § 60.777. The delay of repair provisions in § 60.777 reflect changes and clarifications made to the HON delay of repair provisions for process wastewater in the January 17, 1997 HON rule amendments. The revised provisions allow delay of repair for any of the following situations: (1) the repair is technically infeasible without a shutdown, or the emissions of purged material from immediate repair

would be greater than emissions likely to result from delay of repair, (2) the equipment has been emptied or is no longer used to treat or manage Group 1 wastewater streams, and (3) additional time is necessary to obtain parts.

XIII. Revisions to Requirements for Inspections and Monitoring (§ 60.781)

Today's revised proposed rule changes the inspection and monitoring provisions in § 60.781. The changes clarify that for each excursion, except for excused excursions, the owner or operator has failed to apply control in a manner that achieves the required operating conditions. Failure to achieve the required operating conditions is a violation of the standard.

XIV. Revisions to Reporting Requirements (§ 60.784)

Today's revised proposed rule changes the reporting provisions in § 60.784. These changes are consistent with the reporting provisions in the HON rule. Significant changes proposed include: allowing alternative monitoring and recordkeeping systems, including non-automated systems and data compression systems; clarifying that only one excursion per control device per day can occur; the addition of one excused excursion per control device per semiannual period; clarification of monitoring parameter value violations; and the addition of a report name, the Notification of Compliance Status, to describe compliance demonstration information that must be reported.

A. Alternative Monitoring and Recordkeeping Systems

Today's revised proposed rule would allow owners or operators the option to request approval to use alternative monitoring and recordkeeping systems. This change will allow owners or operators to use existing systems. Alternative monitoring systems specifically discussed in the rule include non-automated systems and data compression systems. These systems will be allowed on a site-specific basis and requests for approval of alternative monitoring must be submitted prior to the implementation of the alternative monitoring system for which approval is being requested.

Another type of alternative monitoring system allows reduced recordkeeping. Under this alternative, the owner or operator may use a monitoring system capable of detecting unrealistic or impossible data. The monitoring system must be equipped with an alarm or other means for alerting the owner or operator when unrealistic or impossible data is generated. Use of such a monitoring system allows the owner or operator to retain only the daily average value and would not require retention of more frequent monitored operating parameter values. Additional monitoring system requirements and recordkeeping requirements for this program are specified in § 60.785.

If after 6 months no excursions have occurred, the owner or operator is no longer required to record the daily average value for any operating day when the daily average value is less than the maximum or greater than the minimum established limit. If an excursion occurs after the owner or operator has ceased recording daily average values, the owner or operator must resume retaining the daily average value for each operating day until another period of 6 consecutive months has passed without an excursion.

B. One Excursion per Control Device

Commenters requested that the rule specifically state that not more than one excursion per control device per operating day is possible. The rule was clarified to say that if one parameter meets the excursion criteria of the rule, then that is considered a single excursion for the control device. If the control device has multiple parameters that are monitored, and more than one of the parameters meets the excursion criteria, it is still considered a single excursion for the control device.

C. Excused Excursions

Commenters stated that excused excursions were necessary to account for the inevitable and unanticipated operating parameter fluctuations that occur during normal operation of control devices. The commenters stated that a certain number of excursions could be expected even with properly operated pollution control devices. The proposed rule requires the owner or operator to record a daily average for each control device with continuously monitored parameters. The EPA is proposing to allow one excused excursion per control device per six month reporting period. Excused excursions may be appropriate when a technology standard, such as the standard mandated in section 111 of the CAA, is predicated on the best demonstrated control. EPA has determined that even properly operated and maintained control equipment may not perform perfectly over time and that this may be taken into account when determining best demonstrated control.

The proposed one excused excursion per semiannual reporting period equates to roughly one-half percent of the days in the reporting period. As discussed in the HON preamble, the time allowed as excused excursions was selected based on information about the types of events that cause parameter excursions; the duration of the typical excursions; and, the frequency of the events that create excursions. In addition, the proposed approach to excused excursions would provide consistency with the HON.

Examples of events that could cause excursions that would count toward the number of excused excursions are as follows: a thermocouple failure in an incinerator; water contamination in a condenser; off-specification feedstocks; electrical problems; control valve problems such as leaky pneumatic drivers; and extreme environmental conditions. Events that are considered malfunctions under the Start-up, Shut-down, and Malfunction Plan required by this subpart are to be handled separately and would not be counted toward the allowed number of excused excursions. In addition, the provisions for excused excursions are not meant to allow actions that are specifically disallowed by other sections of the NSPS or the General Provisions, such as bypass of a control device.

D. Monitoring Parameter Value Violations

Under earlier NSPS and NESHAP programs, parameter monitoring has traditionally been used as a tool in determining whether control devices are being maintained and operated properly. However, section 114(a)(3) of the Act and § 70.6(c) of the operating permit rule (57 FR 32251, July 21, 1992) require the submissions of ''compliance certifications'' from sources subject to the operating permit program. Affected facilities would be subject to the operating permit program. Sources must certify whether compliance was continuous or intermittent, as well as their compliance status at the end of the reporting period. In light of these requirements, the Agency has considered how sources subject to this rule would demonstrate compliance.

EPA has considered several approaches for monitoring requirements and has determined that one or more continuous monitoring systems provide the best compliance assurance. EPA has developed a hierarchy for selecting monitoring requirements. The hierarchy is: (1) continuous emissions monitoring; (2) continuous emissions monitoring for surrogate emissions; (3) operating parameters monitoring; and, (4) work practice requirements. The choice of monitoring system selected should be based on availability, cost, and effectiveness.

For many waste management units, today's revisions specify good work practices, including periodic inspections. For control devices and treatment processes, today's revisions either specify, or require the owner or operator to establish appropriate monitoring parameter values.

Today's revisions specify that operating above the approved maximum value or below the approved minimum value for monitoring parameter values is a violation of the standard.

E. Notification of Compliance Status

The term ''Notification of Compliance Status'' has been added to the rule to provide a report name for compliance demonstration information that must be submitted to the EPA. Most of the information required to be submitted in the Notification of Compliance Status was already required under the September 1994 proposed rule. Types of information that would be included in the Notification of Compliance Status include results of emission point group determinations, performance tests, inspections, continuous monitoring system performance evaluations, values of monitored parameters established during performance tests, and other information used to demonstrate compliance. The Notification of Compliance Status is a one time report submitted for each affected facility. The term ''Notification of Compliance Status'' was chosen because it is also used in the HON.

In addition, the rule was revised to clarify that when performance tests and group determinations based on measurements are performed, only one complete test report is necessary for each test method used for a particular kind of emission point. Results and other required information still must be submitted.

A time frame for submittal of the Notification of Compliance Status was added to the rule. The rule was revised to say that the Notification of Compliance Status is due within 150 days after the compliance dates for the rule. This time frame is consistent with the time frame for the Notification of Compliance Status in the HON.

Tables 9 through 12 were also revised to reflect changes made to the HON tables and to require that the information in the tables be submitted as part of the Notification of Compliance Status. Tables 5, 7, 8, and 13 were also revised to reflect HON table changes.

XV. Revisions to Recordkeeping Requirements (§ 60.785)

Today's revised proposed rule changes the recordkeeping provisions in § 60.785. The changes clarify the periods during which monitoring data should not be included in the daily average: monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments; start-ups; shutdowns; malfunctions; periods of non-operation of the chemical process unit (or portion thereof), resulting in cessation of the emissions to which the monitoring applies.

The EPA also added data retention provisions. Under these provisions, records and reports required by the rule must be kept and must be accessible for 5 years.

Provisions for keeping continuous records and calculating daily averages have been clarified in the proposed rule. Provisions were added to clarify the frequency with which monitoring systems should record data and which of this data are necessary to demonstrate continuous compliance. The provisions require the monitoring system to measure data values at least once every 15 minutes. Each measured data value or block average values for 15-minute or shorter periods are used to calculate hourly average data values. The hourly average values are used to calculate daily average values. For days when all recorded values for a monitored parameter are below the minimum or above the maximum established value, the owner or operator may record that all values were below the maximum or above the minimum established operating parameter value. The 15-minute value must be retained for operating days when the daily average value of the monitored parameter is above the maximum or below the minimum established value. These provisions are consistent with the continuous record provisions in the HON.

XVI. Revisions to Additional Requirements—Start-up, Shutdown, Malfunction, and Non-Operation, and Alternative Means of Emission Limitation, and Permits (§ 60.787)

Today's revised proposed rule adds provisions for proper operation and maintenance of the affected facility during periods of start-up, shutdown, malfunction, and non-operation. The provisions require that the owner or operator of each affected facility develop a written start-up, shutdown, and malfunction plan, to be kept on-site, which would describe procedures for operating and maintaining the affected facility during periods of start-up, shutdown, and malfunction, and a program for corrective action for malfunctioning process and air pollution control equipment used to comply with this subpart. Appropriate reporting and recordkeeping of periods of start-up, shutdown, and malfunction are specified in this section. This change makes the rule more consistent with the HON.

New provisions have also been added for approval of an alternative means of emission limitation if the alternative achieves a reduction in VOC emissions at least equivalent to the reduction achieved under this subpart. Approved alternatives are published in the **Federal Register**. This change makes the rule more consistent with the HON.

Provisions directing owners or operators to obtain a permit under the operating permit program are also included in this section.

XVII. Revisions to Leak Inspection Requirements (§ 60.786)

Today's revised proposed rule changes the leak inspection provisions in § 60.786. These changes mirror the changes made to § 63.148, Leak inspection provisions, of the HON rule in the January 17, 1997 amendments (62 FR 2775).

XVIII. Revisions to List of SOCMI Chemicals (Table 1)

EPA reviewed the list of proposed SOCMI chemicals on Table 1 of the rule and made spelling corrections and removed some duplicate compounds. EPA is considering removing other chemicals from Table 1 and requests comment on whether any chemicals should be added to or deleted from Table 1.

XIX. Addition of Appendix J to Part 60

Today's revised proposed rule adds Appendix J to part 60, How to Determine Henry's Law Constants, Fm Values, Fr Values, and Fe Values for Organic Compounds. This appendix provides the methodology for determining Henry's law constants, fraction measured (Fm) values, fraction removed values (Fr), and fraction emitted (Fe) values.

The development of these values is discussed in ''Correction to the report dated February 2, 1994 ''Estimation of Air Emissions from model wastewater collection and treatment plants'' and ''Estimation of Compound Properties: Correlations for Fm, Fr, Fe, and Fet.'' (Docket item A–90–23, IV–B–4 and Docket item A–94–32, IV–A–1)

The proposed appendix has four sections. Section 2 contains the procedures for determining Henry's law constants, Fm values, Fr values, and Fe values. Section 3 describes how to

locate certain resources. Section 4 contains five tables and thirteen forms.

The appendix would be used to:

1. Determine whether a chemical has a Henry's law constant at 25° C that is less than 0.1 y/x atmosphere per mole fraction.

2. Determine a fraction measured (Fm) value for a chemical.

3. Subtract the concentration of a chemical from a Method 25D concentration.

4. Determine the fraction removed (Fr) value for a chemical that has a Henry's law constant at 25° C that is greater than or equal to 0.1 y/x atmosphere per mole fraction.

5. Determine the fraction emitted (Fe) value for a chemical that has a Henry's law constant at 25° C that is greater than or equal to 0.1 y/x atmosphere per mole fraction.

6. Calculate a Henry's law constant at a specific temperature using a Henry's law constant at a different temperature for the same chemical.

XX. Administrative Requirements

A. Paperwork Reduction Act

The information collection requirements in this proposed rule 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 EPA (ICR No. 1697.02) and a copy may be obtained from Sandy Farmer, Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW; Washington, DC 20460 or by calling (202) 260–2740.

Information will be collected as required in the General Provisions to part 60 and the requirements in the reporting and recordkeeping sections of the proposed rule. The information will be used to ensure compliance with the standard.

The changes included in today's revised proposed rule do not affect the information collection burden estimates prepared for the September 1994 proposal. The changes consist of revised definitions, alternative test procedures, and clarifications of requirements. The proposed changes do not include new or additional requirements. Consequently, the ICR has not been revised for this rule, although it has been resubmitted to OMB.

The estimated annual cost and hour burden per respondent is about $4,830 and 150 hours, per respondent. 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 use 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.

The Agency requests comments on the need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing the respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, D.C. 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, D.C. 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after [insert date of publication in **Federal Register**], a comment to OMB is best assured of having its full effect if OMB receives it by [insert date 30 days after publication in the **Federal Register**]. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

B. Executive Order 12866 Review

Under Executive Order 12866, the EPA must determine whether the proposed regulatory action is ''significant'' and, therefore, subject to OMB review and the requirements of the Executive Order. The Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The September 1994 proposal was considered ''not significant'' under Executive Order 12866. The revisions proposed today clarify the September 1994 proposed rule. As revised the proposed rule does not add any new control requirements. Therefore, this regulatory action is considered ''not significant'' and was not reviewed by OMB.

C. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) provides that, whenever an agency promulgates a proposed rule under 5 U.S.C. § 553, an agency must prepare an initial regulatory flexibility analysis unless the head of the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. The EPA has evaluated the impact of this proposed regulation on small entities. Based upon the analysis, and pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605 (b), I certify that this rule will not have a significant impact on a substantial number of small entities.

The SOCMI Wastewater NSPS applies to new and modified sources. Existing sources may be subject to the NSPS in the event these facilities are modified. Since the regulation is applicable to new sources or existing sources that modify facilities, the actual entities impacted by the regulation are not known precisely. This is particularly true with regard to new sources. Due to the difficulties in predicting those facilities that will be subject to the rule, the EPA looked at two data sources for information: the regulatory flexibility analysis performed for the HON and the SOCMI wastewater database.

The EPA analyzed SOCMI for impacts on small business when the HON was developed. Since the HON and the SOCMI wastewater NSPS will affect the same and similar facilities and the emission control requirements are similar, the EPA believes that the analysis done for the HON is valid for this rule as well. The HON analysis, which was based on 66 firms, concluded that fewer than 15 percent of

the firms were small firms and that they do not constitute a substantial number. Furthermore, the economic analysis for the HON projected generally small impacts (87 percent of the analyzed sample were projected to have output changes of less than 2 percent). Therefore, the HON was not expected to have a significant economic impact on a substantial number of small firms. The regulatory flexibility analysis for the HON is discussed in 59 FR 19449 (April 22, 1994).

The EPA next considered a database created from surveys sent to industry under the authority of section 114 of the Act. This database, called the SOCMI 114 database, includes information on SOCMI-generated wastewater streams. The EPA used the database as another way to assess potential impacts on small entities.

The 25 facilities in the SOCMI 114 database used to make this assessment are owned by 9 companies. All of these facilities produce chemicals in either Standard Industrial Classification (SIC) 2869 (Industrial Chemicals, N.E.C.) or SIC 2821 (Plastic Materials, Synthetic Resins, and Nonvulcanizable Elastomers). The Small Business Administration (SBA) defines a small business for SIC 2869 and SIC 2821 to be companies with less than 1000 and 750 employees, respectively. Each of the 9 companies in the SOCMI 114 database are not small businesses within the SBA definition. Based upon this database, no small businesses are expected to be directly impacted by the SOCMI Wastewater NSPS. The economic impacts of this regulation for the facilities in the SOCMI 114 database are also anticipated to be minimal with price and quantity impacts of less than 1 percent.

The small business analysis conducted for this regulation indicates that companies potentially affected by the NSPS are large companies (SOCMI 114 database) or are not anticipated to be significantly impacted by the regulation (HON regulatory flexibility analysis). Thus, the EPA concludes that this regulation will not have a significant impact on a substantial number of small entities as specified in the RFA.

D. Unfunded Mandates Reform Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate or to the private sector, of $100 million or more in any one year. Under Section 205, the EPA must select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. The EPA has determined that today's proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments.

The EPA has determined that today's proposed rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

E. Executive Orders 12875 and 13084

Today's action does not impose any unfunded mandate upon any State, local, or tribal government; therefore, Executive Orders 12875 and 13084 do not apply to this rulemaking.

Under E.O. 12875 and E.O. 13084, 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 necessary funds to pay the direct costs incurred by the State, local or Tribal government or EPA provides to the Office of Management and Budget a description of the extent of the prior consultation and written communications with representatives of affected State, local and Tribal governments and an Agency statement supporting the need to issue the regulation. In addition, E.O. 12875 and E.O. 13084 require 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.''

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (the NTTAA), Pub. L. No. 104–113, sec. 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, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking includes technical standards and requirements for taking measurements. Consequently, the EPA searched for applicable voluntary consensus standards by searching the National Standards System Institute (NSSN) database. The NSSN is an automated service provided by the American National Standards Institute for identifying available national and international standards.

EPA searched for methods and tests required by this proposed rule, all of which are methods or tests previously promulgated. The proposed rule includes methods that measure: (1) Volatile organic compound concentration in wastewater (EPA Methods 25D, 305, 624, 625, 1624, or 1625); (2) biodegradation rates (EPA Methods 304A and B, aerated reactor test (i.e., BOX test) serum bottle test, performance data with and without biodegradation, or inlet and outlet concentration measurements); (3) vapor leak detection (EPA Method 21); (4) volatile organic compound concentration in vented gas stream (EPA Method 18); (5) volumetric flow rate of the vented gas stream (EPA Methods 2, 2A, 2C, or 2D); (6) sampling site location (Method 1 or 1A); (7) validation of chemical methods (EPA Method 301); (8) determination of actual oxygen concentration (percent O2d) (EPA Method 3B); and (9) visible emissions (EPA Method 22). These EPA methods are found in Appendix A to parts 60, 63, and 136. The biodegradation tests are found in Appendix C to part 63.

Except for EPA Methods 2 and 2C (Appendix A to part 60), no other potentially equivalent methods for the methods and tests in the proposal were found in the NSSN database search. EPA identified one Chinese (Taiwanese) National Standard (CNS) which may potentially be an equivalent method to EPA Methods 2 and 2C. The CNS method is CNS K9019 for measuring velocity and flow rates in stack gases.

However, EPA does not believe that CNS K9019 is a voluntary consensus method. It is unlikely that CNS K9019 was considered by industry groups or national setting standards organizations because it was not developed in the United States (U.S.) and there is no available information about it in the U.S.

To confirm EPA's belief, EPA is asking for comment on whether any U.S. industry has adopted CNS K9019 as a voluntary consensus method. EPA is also asking for comment on whether any potential voluntary consensus methods exist that could be allowed in addition to the methods in the proposal. Methods submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if a method other than Method 301, 40 CFR part 63, Appendix A was used).

G. Executive Order 13045

This proposed rule is not subject to Executive Order 13045 (E.O. 13045), entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866 (E.O. 12866).

The E.O. 13045 applies to any rule that EPA determines (1) ''economically significant'' as defined under E.O. 12866, and (2) the rule has 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.

List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control, Volatile organic compounds, Reporting and recordkeeping requirements.

Dated: September 29, 1998.

Carol M. Browner,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 60 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7413, 7414, 7416, 7429, 7601 and 7602.

2. Part 60 is amended by adding subpart YYY to read as follows:

Subpart YYY—Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Wastewater

Sec.

60.770 Applicability and date of compliance.
60.771 Definitions.
60.772 Modification and reconstruction.
60.773 Process wastewater provisions—General.
60.774 Wastewater tank, surface impoundment, container, individual drain system, and oil-water separator provisions.
60.775 Control requirements for aqueous in-process streams.
60.776 Maintenance wastewater requirements.
60.777 Delay of repair.
60.778 Stream-specific list of VOC determination.
60.779 Process wastewater provisions—Performance standards for treatment processes managing Group 1 wastewater streams and/or residuals removed from Group 1 wastewater streams.
60.780 Standards—Control devices.
60.781 Monitoring of operations.
60.782 Process wastewater provisions—Test methods and procedures for determining applicability and Group 1 and Group 2 determinations (determining which process wastewater streams require control).
60.783 Process wastewater provisions—Test methods and procedures to determine compliance.
60.784 Reporting requirements.
60.785 Recordkeeping requirements.
60.786 Leak inspection provisions.
60.787 Additional requirements—Start-up, shutdown, malfunction, or nonoperation; Alternative means of emission limitation; and permits.
60.788 [Reserved]
60.789 Relationship to other regulations.
Table 1 to subpart YYY—List of SOCMI chemicals
Table 2 to subpart YYY—Applicability of 40 CFR part 60 general provisions to subpart YYY
Table 2A to subpart YYY—Applicability of 40 CFR part 63 general provisions to subpart YYY
Table 3 to subpart YYY—Control requirement options for wastewater tanks, surface impoundment, containers, individual drain systems, and oil-water separators
Table 4 to subpart YYY—Wastewater tanks requiring controls and control requirements
Table 5 to subpart YYY—Compliance options for wastewater tanks, surface impoundments, containers, individual drain systems, and oil-water separators
Table 6 to subpart YYY—Control requirements for items of equipment that meet the criteria of § 60.775
Table 7 to subpart YYY—Monitoring requirements for treatment processes
Table 8 to subpart YYY—Monitoring requirements for control devices
Table 9 to subpart YYY—Information on process wastewater streams to be submitted with notification of compliance status
Table 10 to subpart YYY—Information for treatment processes to be submitted with Notification of Compliance Status
Table 11 to subpart YYY—Information for waste management units to be submitted with Notification of Compliance Status
Table 12 to subpart YYY—Information on residuals to be submitted with Notification of Compliance Status
Table 13 to subpart YYY—Semiannual reporting requirements for control devices [§ 60.784(f)]
Table 14 to subpart YYY—Compound and default biorates used for compliance demonstrations for enhanced biological treatment processes (see § 60.783(h))

Subpart YYY—Standards of Performance for Volatile Organic Compound (VOC) Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Wastewater

§ 60.770 Applicability and date of compliance.

(a) The provisions of this subpart apply to each affected facility and any devices or systems required by this subpart. An affected facility is a designated chemical process unit (CPU) in the synthetic organic chemical manufacturing industry which commences or commenced construction, reconstruction or modification after September 12, 1994. An affected facility that does not generate a process wastewater stream, a maintenance wastewater stream, or an aqueous in-process stream, is not subject to the control requirements of this subpart.

(1) *Initial determination of applicability.* Determine applicability to this subpart as specified in paragraphs (b) through (g) of this section. For an affected facility, determine if the affected facility generates a process wastewater stream, maintenance wastewater stream, or aqueous in-process stream as specified in paragraph (h) of this section. The owner or operator of an affected facility that generates a process wastewater stream, a maintenance wastewater stream, or an aqueous in-process stream shall comply with requirements of this subpart. The owner or operator of an affected facility that does not generate a process wastewater stream, a maintenance wastewater stream, or an aqueous in-process stream is exempt from the requirements specified in this subpart, except for the requirements specified in § 60.770(a)(2), § 60.770(h)(2), § 60.784(d)(12), and § 60.785(c)(8) of this subpart.

(2) *Reevaluation of applicability criteria.* When one or both of the applicability criteria in paragraph (a)(2)(i) or (a)(2)(ii) of this section changes, the owner or operator shall reevaluate the applicability as specified in this paragraph (a). A CPU or designated CPU shall not be evaluated more than once every 12 months. If the

designated CPU is an affected facility and subject to the provisions of this subpart, the owner or operator may elect not to reevaluate applicability.

(i) *Produces SOCMI as a primary product.* If a CPU begins manufacturing chemicals not used in the primary product determination or ceases manufacturing chemicals listed in the primary product determination, the primary product determination is no longer in effect and shall be reevaluated as specified in paragraph (f) of this section.

(ii) *Is Modified or Reconstructed.* If a designated CPU that is not an affected facility is modified or reconstructed after September 12, 1994, then the applicability determination shall be evaluated as specified in § 60.772 of this subpart.

(3) Each affected facility shall be in compliance with the provisions of this subpart no later than initial start-up or [DATE OF PUBLICATION OF FINAL RULE], whichever is later.

(b) The designated CPU is in the synthetic organic chemical manufacturing industry (SOCMI) if the conditions of either paragraph (b)(1) or (b)(2) of this section are met.

(1) The designated CPU is a combination of all process lines within a CPU, i.e., an entire CPU, and the primary product of the designated CPU is a SOCMI chemical; or

(2) The designated CPU is a process line, or combination of process lines within a CPU, and the primary product of the CPU is a SOCMI chemical.

(3) The primary product of a CPU shall be determined as provided in paragraph (f) of this section.

(4) The SOCMI chemicals are listed in Table 1 of this subpart.

(5) Each storage vessel that is part of the CPU shall be assigned to one designated CPU that it services. Storage vessels shall be assigned to the CPU as specified in paragraph (g) of this section.

(c) The designated CPU shall be an entire CPU except as otherwise provided in this paragraph (c).

(1) The owner or operator may designate each process line or combination of process lines within a CPU to be a designated CPU for purposes of this subpart, at any time before commencing construction, reconstruction or modification.

(i) If the owner or operator designates each process line, or combination of process lines, within a CPU to be a designated CPU, the installation of an additional process line may constitute construction of a designated CPU, but shall not in itself be considered modification or reconstruction of the existing process lines.

(ii) If the entire CPU is the designated CPU, the installation of an additional process line may constitute modification or reconstruction of the designated CPU, but shall not in itself be considered construction of a designated CPU.

(2) The owner or operator shall assign all equipment that is part of the CPU to one or more designated CPU.

(3) Any designation under paragraph (c)(1) of this section shall be reported to the Administrator as provided in § 60.784 of this subpart and shall be irrevocable.

(d) *General Provisions applicability.* The owner or operator shall comply with the provisions of subpart A of this part and subpart A of 40 CFR part 63 as specified in Table 2 and 2A of this subpart.

(e) The provisions of this subpart do not apply to the processes listed in paragraphs (e)(1) through (e)(5) of this section. This subpart does not require these processes to comply with the provisions of subpart A of this part.

(1) Research and development facilities.

(2) Petroleum refining process units, regardless of whether the units supply feedstocks that include chemicals listed in Table 1 of this subpart to chemical process units that are subject to the provisions of this subpart.

(3) Chemical process units that are located in coke by-product recovery plants.

(4) Solvent reclamation, recovery, or recycling operations at a hazardous waste treatment, storage, and disposal facility (TSDF) requiring a permit under 40 CFR part 270 that are not part of a SOCMI chemical process unit.

(5) Organic chemicals extracted from natural sources or totally produced from biological synthesis, such as pinene, coconut oil acids, sodium salt, fatty acids, tall oil, tallow acids, potassium salt, and beverage alcohol.

(f) *Primary product determinations.* The primary product of a CPU is determined according to the procedures specified in paragraphs (f)(1) and (f)(2) of this section. With respect to CPU for which the expected use is known, the owner or operator shall use paragraph (f)(1) of this section. With respect to CPU for which the expected use is unknown, the owner or operator shall use paragraph (f)(2) of this section.

(1) *Expected use is known.* The primary product determination for a CPU, where the expected use is known for the 12 months following initial startup shall be determined according to the procedures in paragraphs (f)(1)(i) through (f)(1)(iii) of this section.

(i) If a chemical process unit produces none of the chemical products listed in Table 1 of this subpart, the primary product is not a SOCMI product.

(ii) If a chemical process unit produces only chemical products listed in Table 1 of this subpart, the primary product is a SOCMI product.

(iii) If a chemical process unit produces one or more chemical products listed in Table 1 of this subpart and one or more chemical products not listed in Table 1 of this subpart, the owner or operator shall sum the expected annual production, on a mass basis, for the chemical products listed in Table 1 of this subpart and sum the expected annual production, on a mass basis, for the chemical products not listed in Table 1 of this subpart. If the sum of the chemical products listed in Table 1 of this subpart is greater than or equal the sum of the chemical products not listed in Table 1 of this subpart, the primary product is a SOCMI product. If not, the primary product is not a SOCMI product.

(2) *Expected use is unknown.* Where the expected use of the CPU is unknown for the 12 months following initial startup and the CPU will manufacture one or more of the chemical products listed in Table 1 of this subpart, the primary product of the CPU is a SOCMI product.

(g) *Storage vessel assignment.* The owner or operator shall follow the procedures specified in paragraphs (g)(1) through (g)(4) of this section to determine whether a storage vessel is part of the CPU to which this subpart applies, either in part or in whole.

(1) Where a storage vessel is dedicated to a chemical process unit, the storage vessel shall be considered part of that chemical process unit.

(2) If a storage vessel is not dedicated to a single chemical process unit, then the applicability of this subpart shall be determined according to the provisions in paragraphs (g)(2)(i) through (g)(2)(iii) of this section.

(i) If a storage vessel is shared among chemical process units and one of the process units has the predominant use, as determined by paragraphs (g)(2)(i)(A) and (g)(2)(i)(B) of this section, then the storage vessel is part of that chemical process unit.

(A) If the greatest input into the storage vessel is from a chemical process unit that is located on the same plant site, then that chemical process unit has the predominant use.

(B) If the greatest input into the storage vessel is provided from a chemical process unit that is not located

on the same plant site, then the predominant use is the chemical process 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 chemical process units so that there is no single predominant use, and at least one of those chemical process units is subject to this subpart, in part or whole, the storage vessel shall be considered to be part of the chemical process unit that is subject to this subpart, in part or whole. If more than one chemical process unit is subject to this subpart, in part or whole, the owner or operator may assign the storage vessel to any of the chemical process units subject to this subpart.

(iii) If the predominant use of a storage vessel varies from year to year, then the applicability of this subpart shall be determined based on the use that occurred during the year preceding [date final rule is published]. This determination shall be reported as part of an operating permit application or as otherwise specified by the permitting authority.

(3) Where a storage vessel is located at a plant site that includes one or more chemical process units which place material into, or receive materials from the storage vessel, but the storage vessel is located in a tank farm (including a marine tank farm), the applicability of this subpart shall be determined according to the provisions in paragraphs (g)(3)(i) through (g)(3)(iv) of this section.

(i) The storage vessel may only be assigned to a chemical process unit that utilizes the storage vessel and does not have an intervening storage vessel for that product (or raw material, as appropriate). With respect to any chemical process unit, an intervening storage vessel means a storage vessel connected by hard-piping to the chemical process unit and to the storage vessel in the tank farm so that product or raw material entering or leaving the chemical process unit flows into (or from) the intervening storage vessel and does not flow directly into (or from) the storage vessel in the tank farm.

(ii) If there is no chemical process unit at the plant site that meets the criteria of paragraph (g)(3)(i) of this section with respect to a storage vessel, this subpart does not apply to the storage vessel.

(iii) If there is only one chemical process unit at the plant site that meets the criteria of paragraph (g)(3)(i) of this section with respect to a storage vessel, the storage vessel shall be assigned to that chemical process unit.

(iv) If there are two or more chemical process units at the plant site that meet the criteria of paragraph (g)(3)(i) of this section with respect to a storage vessel, the storage vessel shall be assigned to one of those chemical process units according to the provisions of paragraph (g)(2) of this section. The predominant use shall be determined among only those chemical process units that meet the criteria of paragraph (g)(3)(i) of this section.

(4) If the storage vessel begins receiving material from (or sending material to) another chemical process unit, or ceasing to receive material from (or send material to) a chemical process unit, or if there is a significant change in the use of a storage vessel whose predominant use was determined according to paragraph (g)(2)(i) of this section that could reasonably change the predominant use, the owner or operator shall reevaluate the applicability of this subpart to the storage vessel.

(h) *Process Wastewater, maintenance wastewater, and aqueous in-process stream determination.*

(1) The owner or operator shall determined whether an affected facility generates a process wastewater stream, a maintenance wastewater stream, or an aqueous in-process stream. The owner or operator of an affected facility that generates a process wastewater stream, maintenance wastewater stream, or aqueous in-process stream shall comply with the provisions of this subpart. The owner or operator of an affected facility that does not generate a process wastewater stream, maintenance wastewater stream, or aqueous in-process stream is exempt from the requirements specified in this subpart, except for the requirements specified in §§ 60.770(a)(2), 60.770(h)(2), 60.784(d)(12), and 60.785(c)(8) of this subpart.

(2) If an affected facility begins to or ceases to generate a process wastewater stream, maintenance wastewater stream, or aqueous in-process stream, the owner or operator shall reevaluate the applicability of this subpart to the affected facility. If an affected facility is subject to the provisions of this subpart, the owner or operator may elect not to reevaluate applicability.

(3) The affected facility includes the water and wastewater streams listed in paragraphs (h)(3)(i) through (h)(3)(vi) of this section, but they are not subject to the requirements of this subpart or the provisions of subpart A of this part.

(i) Stormwater managed in segregated sewers.

(ii) Water from fire-fighting and deluge systems in segregated sewers.

(iii) Spills.

(iv) Water from safety showers.

(v) Water from testing of deluge systems.

(vi) Water from testing of firefighting systems.

§ 60.771 Definitions.

As used in this subpart, all terms not defined here shall have the meaning given them in the Act and in subpart A of this part. The following terms shall have the specific meanings given them in this section.

Annual average concentration means the flow-weighted annual average concentration, as determined according to the procedures specified in § 60.782(b) of this subpart.

Annual average flow rate means the annual average flow rate, as determined according to the procedures specified in § 60.782(c) of this subpart.

Aqueous in-process stream means a stream comprised of water and VOC within a CPU and prior to the point of determination that is conveyed, or otherwise handled, in equipment controlled less stringently than required in Table 6 to this subpart. An aqueous in-process stream has a concentration of at least 500 part per million by weight (ppmw)and a flowrate of at least 1 liter per minute.

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.

Boiler means any enclosed combustion device that extracts useful energy in the form of steam and is not an incinerator. Boiler also means any industrial furnace as defined in 40 CFR 260.10.

Car-seal means a seal that is placed on a device that is used to change the position of a valve (e.g., from opened to closed) in such a way that the position of the valve cannot be changed without breaking the seal.

Chemical process unit or CPU means the equipment assembled and connected by hard-piping or ductwork to process raw materials and to manufacture a product. A chemical process unit consists of more than one unit operation. For the purpose of this subpart, chemical process unit includes air oxidation reactors and their associated product separators and recovery devices; reactors and their associated product separators and recovery devices; distillation units and

their associated distillate receivers and recovery devices; associated unit operations; associated recovery devices; and any feed, intermediate and product storage vessels, and connected ductwork and hard-piping. A chemical process unit includes pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems. A chemical process unit is identified by its primary product.

Closed biological treatment process means a tank or surface impoundment where biological treatment occurs and VOC emissions from the treatment process are routed either to a control device by means of a closed vent system or to a fuel gas system by means of hard-piping. The tank or surface impoundment has a fixed roof, as defined in this section, or a floating flexible membrane cover that meets the requirements specified in 40 CFR 63.134.

Closed-vent system means a system that is not open to the atmosphere and is composed of hard-piping, ductwork, connections, and, if necessary, flow inducing devices that transport gas or vapor from an emission point to a control device.

Combustion device means an individual unit of equipment, such as a flare, incinerator, process heater, or boiler, used for the combustion of volatile organic compound emissions.

Container means any portable waste management unit that has a capacity greater than or equal to 0.1 m^3 in which a material is stored, transported, treated, or otherwise handled. Examples of containers are drums, barrels, tank trucks, barges, dumpsters, tank cars, dump trucks, and ships.

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 § 60.785 of this subpart.

Continuous recorder means a data recording device recording an instantaneous data value or an average data value at least once every hour.

Continuous seal means a seal that forms a continuous closure that completely covers the space between the wall of the storage vessel and the edge of the floating roof. A continuous seal may be a vapor-mounted, liquid-mounted, or metallic shoe seal. A continuous seal may be constructed of fastened segments so as to form a continuous seal.

Control device means any combustion device, recovery device for vapor vents, or recapture device. Such equipment includes, but is not limited to, absorbers, carbon adsorbers, condensers, incinerators, flares, boilers, and process heaters. For a steam stripper, a primary condenser is not considered a control device.

Cover means a device or system which is placed on or over a waste management unit containing wastewater or residuals so that the entire surface area is enclosed to minimize air VOC emissions. A cover may have openings necessary for operation, inspection, and maintenance of the waste management unit such as access hatches, sampling ports, and gauge wells provided that each opening is closed when not in use. Examples of covers include a fixed roof installed on a wastewater tank, a lid installed on a container, and an air-supported enclosure installed over a waste management unit.

Designated chemical process unit or designated CPU means an individual process line within a CPU or a combination of some or all of the process lines within a CPU.

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.

Enhanced biological treatment system or enhanced biological treatment process means an aerated, thoroughly mixed treatment unit(s) that contains biomass suspended in water followed by a clarifier that removes biomass from the treated water and recycles recovered biomass to the aeration unit. The mixed liquor volatile suspended solids (biomass) is greater than 1 kilogram per cubic meter throughout each aeration unit. The biomass is suspended and aerated in the water of the aeration unit(s) by either submerged air flow or mechanical agitation. A thoroughly mixed treatment unit is a unit that is designed and operated to approach or achieve uniform biomass distribution and organic compound concentration throughout the aeration unit by quickly dispersing the recycled biomass and the wastewater entering the unit.

External floating roof means a pontoon-type or double-deck-type cover that rests on the liquid surface in a storage vessel or waste management unit with no fixed roof.

Fill or *filling* means the introduction of a wastewater stream or residual into a waste management unit (e.g., storage tank), but not necessarily to complete capacity.

Fixed roof means a cover that is mounted on a waste management unit or storage vessel in a stationary manner and that does not move with fluctuations in liquid level.

Flame zone means the portion of the combustion chamber in a boiler or process heater occupied by the flame envelope.

Flexible operation unit means a chemical process unit that manufactures different chemical products periodically by alternating raw materials or operating conditions. These units are also referred to as multi-purpose units, multiple product units, campaign plants, or blocked operations.

Floating roof means a cover consisting of a double deck, pontoon single deck, internal floating cover or covered floating roof, which rests upon and is supported by the liquid being contained, and is equipped with a closure seal or seals to close the space between the roof edge and waste management unit or storage vessel wall.

Flow indicator means a device which indicates whether gas flow is, or whether the valve position would allow gas flow to be, present in a line.

Fbio means site-specific fraction of VOC biodegraded, unitless.

Fe means fraction emitted value, unitless.

*Fm m*eans compound-specific fraction measured factor, unitless.

Fr means fraction removed value for VOC, unitless.

Fuel gas means gases that are combusted to derive useful work or heat.

Fuel gas system means the offsite and onsite piping and control system that gathers gaseous stream(s) generated by onsite operations, may blend them with other sources of gas, and transports the gaseous stream for use as fuel gas in combustion devices or in in-process combustion equipment such as furnaces and gas turbines, either singly or in combination.

Hard-piping means pipe or tubing that is manufactured and properly installed using good engineering judgment and standards, such as ANSI B31–3.

HON means the National Emissions Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks, 40 CFR part 63, subparts F and G.

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. The above energy recovery section limitation does not apply to an energy recovery section used solely to preheat the incoming vent stream or combustion air.

Individual drain system means the stationary system used to convey wastewater streams or residuals to a waste management unit or to discharge or disposal. The term includes hard-piping, all process drains and junction boxes, together with their associated sewer lines and other junction boxes, manholes, sumps, and lift stations, conveying wastewater streams or residuals. A segregated storm water sewer system, which is a drain and collection system designed and operated for the sole purpose of collecting rainfall-runoff at a facility, and which is segregated from all other individual drain systems, is excluded from this definition.

Initial start-up means the first time a new or reconstructed affected facility begins production, or the first time a modified affected facility is put into production. Initial start-up does not include operation solely for testing equipment. For purposes of this subpart, initial start-up does not include subsequent start-ups (as defined in this section) of chemical process units following malfunctions or shutdowns or following changes in product for flexible operation units or following recharging of equipment in batch operation.

Internal floating roof means a cover that rests or floats on the liquid surface (but not necessarily in complete contact with it) inside a storage vessel or waste management unit that has a fixed roof.

Junction box means a manhole or a lift station, or access point to a wastewater sewer line.

Liquid-mounted seal means a foam-or liquid-filled seal mounted in contact with the liquid between the wall of the storage vessel or waste management unit and the floating roof. The seal is mounted continuously around the circumference of the vessel or unit.

Maintenance wastewater means wastewater generated by the draining of process fluid from components in the chemical process unit into an individual drain system prior to or during maintenance activities. Maintenance wastewater can be generated during planned and unplanned shutdowns and during periods not associated with a shutdown. Examples of activities that can generate maintenance wastewaters include descaling of heat exchanger tubing bundles, cleaning of distillation column traps, draining of low legs and high point bleeds, draining of pumps into an individual drain system, and draining of portions of the chemical process unit for repair.

Maximum true vapor pressure means the equilibrium partial pressure exerted by the organics 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 Bulletin 2517, Evaporation Loss From External Floating Roof Tanks; or

(2) As obtained from standard reference texts; or

(3) As determined by the American Society for Testing and Materials Method D2879–83; or

(4) Any other method approved by the Administrator.

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.

Modification means any physical change in, or change in the method of operation of, an existing designated CPU which increases or creates emissions to the atmosphere of VOC from process wastewater and/or aqueous in-process streams generated by the designated CPU, except as provided in § 60.772(c) of this subpart.

Non-automated monitoring and recording system means manual reading of values measured by monitoring instruments and manual transcription of those values to create a record. Non-automated systems do not include strip charts.

Oil-water separator or *organic-water separator* means a waste management unit, used to separate oil or organics from water. An oil-water or organic-water separator consists of not only the separation unit but also the forebay and other separator basins, skimmers, weirs, grit chambers, sludge hoppers, and bar screens that are located directly after the individual drain system and prior to additional treatment units such as an air flotation unit, clarifier, or biological treatment unit. Examples of an oil-water or organic-water separator include, but are not limited to, an American Petroleum Institute separator, parallel-plate interceptor, and corrugated-plate interceptor with the associated ancillary equipment.

On-site or onsite means, with respect to records required to be maintained by this subpart, that the records are stored at a location within a major source which encompasses the affected facility. On-site includes, but is not limited to, storage at the designated chemical process unit to which the records pertain, or storage in central files elsewhere at the major source.

Open biological treatment process means a biological treatment process that is not a closed biological treatment process as defined in this section.

Operating permit means a permit required by 40 CFR part 70 or part 71.

Organic monitoring device means a unit of equipment used to indicate the concentration level of organic compounds exiting a recovery device based on a detection principle such as infra-red, photo ionization, or thermal conductivity.

Petroleum refining process, also referred to as a *petroleum refining process unit,* means a process that for the purpose of producing transportation fuels (such as gasoline and diesel fuels), heating fuels (such as fuel gas, distillate, and residual fuel oils), or lubricants; separates petroleum; or separates, cracks, or reforms unfinished derivatives. Examples of such units include, but are not limited to, alkylation units, catalytic hydrotreating, catalytic hydrorefining, catalytic hydrocracking, catalytic reforming, catalytic cracking, crude distillation, and thermal processes.

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.

Point of determination means each point where process wastewater exits the chemical process unit.

Note to Definition: This subpart allows determination of the characteristics of a wastewater stream: (1) At the point of determination or (2) downstream of the point of determination if corrections are made for changes in flow rate and annual average concentration of VOC as determined in § 60.783 of this subpart. Such changes include losses by air VOC emissions; reduction of annual average concentration or changes in flow rate by mixing with other

water or wastewater streams; and reduction in flow rate or annual average concentration by treating or otherwise handling the wastewater stream to remove or destroy VOC.

Primary fuel means the fuel that provides the principal heat input to the device. To be considered primary, the fuel shall be able to sustain operation without the addition of other fuels.

Process heater means a device that transfers heat liberated by burning fuel directly to process streams or to heat transfer liquids other than water.

Process line means a group of unit operations and other equipment assembled and connected by hard-piping or ductwork to process raw materials and to manufacture a product, and that can operate independently of other unit operations in the CPU if supplied with sufficient raw materials and if equipped with sufficient product storage capacity. Two or more process lines may share recovery and ancillary equipment such as utilities. A process line is either an entire CPU, or one of multiple process lines which, together, are an entire CPU. All CPU have at least one process line, and some CPU have more than one process line.

Process wastewater means wastewater which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product. Examples are tank drawdown or feed tank drawdown; water formed during a chemical reaction or used as a reactant; water used to wash impurities from organic products or reactants; water used to cool or quench organic vapor streams through direct contact; water used to wash equipment between batches; and condensed steam from jet ejector systems pulling vacuum on vessels containing VOC.

Process wastewater stream means a stream that contains process wastewater as defined in this section.

Product means a compound or chemical which is manufactured by the chemical process unit. Isolated intermediates, impurities, wastes, and trace contaminants are not considered products.

Recapture device means an individual unit of equipment capable of and used for the purpose of recovering chemicals, but not normally for use, reuse, or sale. For example, a recapture device may recover chemicals primarily for disposal. Recapture devices include, but are not limited to, absorbers, carbon adsorbers, and condensers.

Recovery device means an individual unit of equipment capable of and normally used for the purpose of recovering chemicals for fuel value (i.e., net positive heating value), use, reuse or for sale for fuel value, use, or reuse. Examples of equipment that may be recovery devices include absorbers, carbon adsorbers, condensers, oil-water separators or organic-water separators, or organic removal devices such as decanters, strippers, or thin-film evaporation units. For purposes of the monitoring, recordkeeping, and reporting requirements of this subpart, recapture devices are considered recovery devices.

Relief valve means a valve used only to release an unplanned, non-routine discharge. A relief 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.

Research and development facility means laboratory and pilot plant operations whose primary purpose is to conduct research and development into new processes and products, where the operations are under the close supervision of technically trained personnel, and is not engaged in the manufacture of products for commercial sale, except in a *de minimis* manner.

Residual means any liquid or solid material containing VOC that is removed from a wastewater stream by a waste management unit or treatment process that does not destroy organic compounds (nondestructive unit). Examples of residuals from nondestructive wastewater management units are: the organic layer and bottom residue removed by a decanter or organic-water separator and the overheads from a steam stripper or air stripper. Examples of materials which are not residuals are: silt; mud; leaves; bottoms from a steam stripper or air stripper; and sludges, ash, or other materials removed from wastewater being treated by destructive devices such as biological treatment units and incinerators.

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.

Sewer line means a lateral, trunk line, branch line, or other conduit including, but not limited to, grates, trenches, etc., used to convey wastewater streams or residuals to a downstream waste management unit.

Shutdown means for purposes including, but not limited to, periodic maintenance, replacement of equipment, or repair, the cessation of operation of a chemical process unit or a reactor, air oxidation reactor, distillation unit, waste management unit, equipment required or used to comply with this subpart, or emptying and degassing of a storage vessel. Shutdown does not include the routine rinsing or washing of equipment in batch operation between batches.

Single-seal system means a floating roof having one continuous seal that completely covers the space between the wall of the storage vessel and the edge of the floating roof. 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.

Start-up means the setting into operation of a chemical process unit or a reactor, air oxidation reactor, distillation unit, waste management unit, or equipment required or used to comply with this subpart or a storage vessel after emptying and degassing. Start-up includes initial start-up, operation solely for testing equipment, the recharging of equipment in batch operation, and transitional conditions due to changes in product for flexible operation units.

Start-up, shutdown, and malfunction plan means the plan required under § 60.787 of this subpart. This plan details the procedures for operation and maintenance of the affected facility during periods of start-up, shutdown, and malfunction.

Steam jet ejector means a steam nozzle which discharges a high-velocity jet across a suction chamber that is connected to the equipment to be evacuated.

Storage vessel means a tank or other vessel that is used to store organic liquids that contain one or more of VOC and that has been assigned, according to the procedures in § 60.770(f) of this subpart, to a chemical process unit that is subject to this subpart. Storage vessel does not include:

(1) Vessels permanently attached to motor vehicles such as trucks, railcars, barges, or ships;

(2) Pressure vessels designed to operate in excess on 204.9 kilopascals and without VOC emissions to the atmosphere;

(3) Vessels with capacities smaller than 38 cubic meters;

(4) Vessels storing organic liquids that contain VOC only as impurities;

(5) Bottom receivers tanks;

(6) Surge control vessels; or

(7) Wastewater storage tanks.

Surface impoundment means a waste management unit which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or waste containing free liquids. A surface impoundment is used for the purpose of treating, storing, or disposing of wastewater or residuals, and is not an injection well. Examples of surface impoundments are equalization, settling, and aeration pits, ponds, and lagoons.

Tank drawdown means any material or mixture of materials discharged from a product tank, feed tank, or intermediate tank for the purpose of removing water or other contaminants from the tank.

Temperature monitoring device means a unit of equipment used to monitor temperature and having a minimum accuracy of (a) ±1 percent of the temperature being monitored expressed in degrees Celsius or (b) ±0.5 degrees Celsius (°C), whichever number is greater (i.e., has the highest absolute value).

Treatment process means a specific technique that removes or destroys the organics in a wastewater or residual stream such as a steam stripping unit, thin-film evaporation unit, waste incinerator, biological treatment unit, or any other process applied to wastewater streams or residuals to comply with § 60.779 of this subpart. Most treatment processes are conducted in tanks. Treatment processes are a subset of waste management units.

Unit operation means one or more pieces of process equipment used to make a single change to the physical or chemical characteristics of one or more process streams. Unit operations include, but are not limited to, reactors, distillation units, extraction columns, absorbers, decanters, dryers, condensers, and filtration equipment.

Vapor-mounted seal means a continuous seal that completely covers the annular space between the wall of the storage vessel or waste management unit and the edge of the floating roof and is mounted such that there is a vapor space between the stored liquid and the bottom of the seal.

Volatile organic compound, volatile organic compounds, VOC means substances defined as volatile organic compounds in 40 CFR 51.100(s) and not excluded or exempted by that section, except that any substance with a Henry's law constant less than or equal to 0.1 y/x atmosphere per mole fraction as determined according to appendix J of this subpart is not a VOC for purposes of this subpart.

Waste management unit means the equipment, structure(s), or device(s) used to convey, store, treat, or dispose of wastewater streams or residuals. Examples of waste management units include: wastewater tanks, surface impoundments, individual drain systems, and biological wastewater treatment units. Examples of equipment that may be waste management units include containers, air flotation units, oil-water separators or organic-water separators, or organic removal devices such as decanters, strippers, or thin-film evaporation units. If such equipment is used for recovery then it is part of a chemical process unit and is not a waste management unit.

Wastewater is either a process wastewater or a maintenance wastewater and means water that:

(1) Contains either:

(i) An annual average concentration of VOC of at least 50 parts per million by weight at the point of determination and has an annual average flow rate of 0.02 liter per minute or greater; or

(ii) An annual average concentration of VOC of at least 10,000 parts per million by weight at the point of determination at any flow rate, and that

(2) Is discarded from a chemical process unit as defined in this section.

Wastewater stream means a stream that contains wastewater as defined in this subpart.

Wastewater tank means a stationary waste management unit that is designed to contain an accumulation of wastewater or residuals and is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support. Wastewater tanks used for flow equalization are included in this definition.

Water seal controls means a seal pot, p-leg trap, or other type of trap filled with water (e.g, flooded sewers that maintain water levels adequate to prevent air flow through the system) that creates a water barrier between the sewer line and the atmosphere. The water level of the seal shall be maintained in the vertical leg of a drain in order to be considered a water seal.

§ 60.772 Modification and reconstruction.

(a) *General.* The owner or operator shall follow the procedures specified in paragraphs (b), (c), (d), (f), (g), (h) and (j) of this section to determine whether a designated CPU that is neither a flexible operating unit or part of a flexible operating unit has been or will be modified. The owner or operator shall follow the procedures specified in paragraphs (b), (c), (e), (f), (g), (h) and (j) of this section to determine whether a designated CPU that is a flexible operating unit or part of a flexible operating unit has been or will be modified. The owner or operator shall follow the procedures specified in paragraph (k) of this section to determine whether a designated CPU has been or will be reconstructed.

(b) *Determining modification* Modification determinations are based on the designated CPU. To determine whether a modification has occurred or will occur, the owner or operator shall follow the procedures in either paragraph (b)(1) or (b)(2) of this section.

(1) Designate the physical or operational change as a modification.

(2) Determine whether the physical or operational change constitutes a modification by evaluating whether VOC emissions from process wastewater and aqueous in-process streams increased as a result of the physical or operational change. To make this determination, the owner or operator shall follow the procedures specified in paragraph (d) or (e), and in paragraphs (f), (g), (h) and (j) of this section, as appropriate. Physical and operational changes that are not, by themselves, considered modifications under this subpart are listed in paragraph (c) of this section.

(c) *Physical or operational changes that are not modifications.* The changes listed in this paragraph (c) shall not, by themselves, be considered modifications under this subpart. Section 60.14(e) does not apply for the purposes of this subpart.

(1) Maintenance, repair, and replacement which the Administrator determines to be routine for a source category, subject to the provisions of § 60.15 of this part. Replacement of spent catalyst with like catalyst is not a modification.

(2) An increase in the hours of operation.

(3) Physical or operational changes that cost less than 12.5 percent of the original cost of the existing designated CPU as adjusted to reflect capital improvements, casualty losses, and defunct equipment. Neither account depreciation or deflation is an allowable adjustment. The owner or operator shall keep a record or shall provide documentation on demand documenting that the cost was less than 12.5 percent.

(4) The relocation or change in ownership of an existing facility.

(d) *Determining VOC emissions generated by a designated CPU that is neither a flexible operation unit or part of a flexible operation unit.* For a

designated CPU that is neither a flexible operation unit or part of a flexible operation unit, the owner or operator shall follow the procedures specified in paragraphs (d)(1) through (d)(4) of this section to determine whether VOC emissions from process wastewater and aqueous in-process streams have increased or will increase after a physical or operational change has occurred. The owner or operator is required to evaluate only those process wastewater and aqueous in-process streams that are affected (i.e., changed or created) by the physical or operational change. For the purposes of this section, ''affected process wastewater stream'' and ''affected aqueous in-process stream'' mean process wastewater streams and aqueous in-process streams changed or created by a physical or operational change. The owner or operator shall keep a record or shall provide documentation on demand showing how it was determined that a process wastewater or aqueous in-process stream was not affected by a physical or operational change. At a minimum this documentation shall document concentration and flow rate of affected process wastewater and aqueous in-process streams both before and after a physical or operational change.

(1) *Identify the designated CPU.* Identify the designated CPU that has undergone or will undergo a physical or operational change.

(2) *Determine VOC emissions before a physical or operational change.* For each affected process wastewater and aqueous in-process stream, the owner or operator shall determine VOC emissions before a physical or operational change, i.e., baseline emissions, using VOC emissions or VOC mass flow rate as a surrogate for VOC emissions. VOC emissions and mass flow rate shall be determined as specified in paragraph (f) of this section. The baseline VOC emissions or baseline VOC mass flow rate for process wastewater and aqueous in-process streams shall be summed as specified in paragraph (j) of this section.

(3) *Determine VOC emissions after a physical or operational change.* For each affected process wastewater or aqueous in-process stream, the owner or operator shall determine VOC emissions after a physical or operational change, using VOC emissions or VOC mass flow rate as a surrogate for VOC emissions. VOC emissions and mass flow rate shall be determined as specified in paragraph (f) of this section. The VOC emissions or VOC mass flow rate for process wastewater and aqueous in-process streams shall be summed as specified in paragraph (j) of this section.

(4) *Compare the sum of baseline VOC emissions and the sum of VOC emissions after a physical or operational change.*

(i) *VOC emissions.* The owner or operator shall compare the sum of baseline VOC emissions to the sum of VOC emissions after the physical or operational change. If the sum of VOC emissions from process wastewater and aqueous in-process streams after the physical or operational change are greater than the sum of baseline VOC emissions from process wastewater and aqueous in-process streams, the VOC emissions from process wastewater and aqueous in-process streams have increased for the designated CPU.

(ii) *VOC mass flow rate as a surrogate for VOC emissions.* For process wastewater streams, the owner or operator shall compare the sum of baseline VOC mass flow rate at the point of determination to the sum of VOC mass flow rate at the point of determination after the physical or operational change. The owner or operator shall compare the sum of baseline VOC mass flow rate for aqueous in-process streams to the sum of VOC mass flow rate for aqueous in-process streams after the physical or operational change. If the sum of VOC mass flow rate at the point of determination after the physical or operational change is greater than the sum of baseline VOC mass flow rate at the point of determination, the VOC mass flow rate has increased and the VOC emissions have increased for the designated CPU. If the sum of VOC mass flow rate for aqueous in-process streams after the physical or operational change is greater than the sum of baseline VOC mass flow rate of aqueous in-process streams, the VOC mass flow rate has increased and the VOC emissions increased for the designated CPU. Once a determination has been made that VOC mass flow rate has increased, either at the point of determination or for aqueous in-process streams, the owner or operator may elect not to make the other comparison.

(e) *Determining VOC emissions generated by a designated CPU that is a flexible operation unit or part of a flexible operation unit.* For a designated CPU that is a flexible operation unit or part of a flexible operation unit, the owner or operator shall follow the procedures specified in paragraphs (e)(1) through (e)(5) of this section to determine whether VOC emissions from process wastewater and aqueous in-process streams have increased or will increase after a physical or operational change has occurred. The owner or operator is required to evaluate only those process wastewater and aqueous in-process streams that are affected (i.e., changed or created) by the physical or operational change.

(1) Identify the designated CPU that has undergone or will undergo a physical or operational change.

(2) *Select the baseline product.* The owner or operator shall select a baseline product from those products that the designated CPU is capable of producing without a change in physical or operational design. The owner or operator shall use best engineering judgement and consider the information specified in paragraphs (e)(2)(i)(A) through (e)(2)(i)(D) of this section in identifying these products. Products the owner or operator shall not consider are specified in paragraphs (e)(2)(ii)(A) through (e)(2)(ii)(C) of this section.

(i) *Products that could be produced by the designated CPU.*

(A) Products the designated CPU currently produces.

(B) Products that the designated CPU has produced in the past, provided that a change in physical or operational design has not occurred since the product was last produced.

(C) Products that the designated CPU reasonably can produce without having to change the physical or operational design.

(D) Products that similar designated CPU have produced.

(ii) *Products that could not be produced by the CPU.*

(A) Products that would require a change in the physical or operational design of the designated CPU.

(B) Products which cannot reasonably be produced, including products which cannot be reasonably produced in commercially viable quantities, products which are not sold in commerce, and products for which no commercial market is reasonably foreseeable or for which there is no known use in commerce.

(C) Products for which the designated CPU may have the theoretical physical capacity to produce, but for which the owner or operator does not have the technical knowledge necessary to produce that product and cannot, through exercise of reasonable due diligence, obtain the requisite technical knowledge.

(3) *Determine VOC emissions before a physical or operational change.* For each affected process wastewater and aqueous in-process stream, the owner or operator shall determine VOC emissions before a physical or operational change, i.e., baseline emissions, using VOC emissions or VOC mass flow rate as a surrogate for VOC emissions. VOC emissions and mass flow rate shall be

determined as specified in paragraph (f) of this section. Baseline VOC emissions shall be based on production of the baseline product. The VOC emissions or VOC mass flow rate for each process wastewater or aqueous in-process stream shall be summed as specified in paragraph (j) of this section.

(4) *Determine VOC emissions after a physical or operational change.* For each process wastewater and aqueous in-process stream, the owner or operator shall determine the sum of VOC emissions after a physical or operational change using VOC emissions or VOC mass flow rate as a surrogate for VOC emissions. VOC emissions and mass flow rate shall be determined as specified in paragraph (f) of this section. The VOC emissions or VOC mass flow rate for each process wastewater or aqueous in-process stream shall be summed as specified in paragraph (j) of this section. VOC emissions after the physical or operational change shall be based on the production of the product or products that are produced after the physical or operational change. The owner or operator may consider only the new product(s).

(5) *Compare baseline VOC emissions and VOC emissions after a physical or operational change.*

(i) *VOC emissions.* The owner or operator shall compare the sum of baseline VOC emissions to the sum of VOC emissions after the physical or operational change. If the sum of VOC emissions from process wastewater and aqueous in-process streams after the physical or operational change are greater than the sum of baseline VOC emissions from process wastewater and aqueous in-process streams, the VOC emissions from process wastewater and aqueous in-process streams have increased for the designated CPU.

(ii) *VOC mass flow rate as a surrogate for VOC emissions.* The owner or operator shall compare baseline VOC mass flow rate at the point of determination to VOC mass flow rate at the point of determination after the physical or operational change. The owner or operator shall compare baseline VOC mass flow rate for aqueous in-process streams to VOC mass flow rate for aqueous in-process streams after the physical or operational change. If the VOC mass flow rate at the point of determination after the physical or operational change is greater than the baseline VOC mass flow rate at the point of determination, the VOC mass flow rate has increased and the VOC emissions have increased for the designated CPU. If the VOC mass flow rate for aqueous in-process streams after the physical or operational change is greater than the baseline VOC mass flow rate of aqueous in-process streams, the VOC mass flow rate has increased and the VOC emissions have increased for the designated CPU. Once a determination has been made that VOC mass flow rate has increased, either at the point of determination or for aqueous in-process streams, the owner or operator may elect not to make the other comparison.

(f) *Determining VOC emissions.* VOC emissions shall be determined using either VOC emissions or mass flow rate as a surrogate for VOC emissions. VOC emissions and mass flow rate shall be determined on an annual average basis. To determine VOC emissions using the default fraction emitted value, Fe, for the individual drain system and the treatment process, the owner or operator shall use the procedures specified in paragraph (f)(1) of this section. To determine VOC emissions using site-specific modeling for the individual drain system and either the default Fe values for the treatment process or VOC emissions for the treatment process, the owner or operator shall use the procedures specified in paragraph (f)(2) of this section. To determine VOC emissions using annual average mass flow rate as a surrogate for emissions, the owner or operator shall follow the procedures specified in paragraph (f)(3) of this section.

(1) *Calculate VOC emissions using the default fraction emitted value, Fe, for the individual drain system and the treatment process.* For each process wastewater stream and aqueous in-process stream, the owner or operator shall calculate VOC emissions using the default Fe values for the individual drain system and the treatment process and use equation 1 in this paragraph (f)(1). The default Fe values for the individual drain system and the treatment process are listed in table 2 in appendix J of this part. Annual average concentration shall be determined using the procedures specified in paragraph (g)(1) of this section. Annual average flow rate shall be determined using the procedures specified in paragraph (h) of this section. The owner or operator is not required to determine the concentration of VOC that are not reasonably expected to be in the process. The owner or operator is required to consider only VOC included on the stream-specific list of VOC when measuring VOC concentrations. The stream-specific list of VOC shall be as determined as specified in § 60.778 of this subpart.

$$\text{VOC emissions} = \left(6.0 * 10^{-8}\right) * AQ * H \sum_{i=1}^{n} AC_i * Fe_i \qquad \text{(Eqn 1)}$$

Where:

VOC emissions=Annual average emissions of VOC, for a process wastewater or aqueous in-process stream, megagrams per year.

AQ=Annual average flow rate of the process wastewater stream or aqueous in-process stream, liters per minute.

H=Number of hours during the designated 12-month period that the process wastewater stream or aqueous in-process stream was generated, hours per year.

ACi_i=Annual average concentration of VOC i of the process wastewater stream or aqueous in-process stream, parts per million by weight.

Fe_i=Fraction emitted of VOC i for the individual drain system and the treatment process, dimensionless. Fe values for the individual drain system and the treatment process are listed in table 2 in appendix J to this part.

n=Total number of VOC in process wastewater stream or aqueous in-process stream.

$6.0 * 10^{-8}$=Conversion factor, 1000 kilograms per cubic meter, 60 minutes per hour, 10^{-3} cubic meters per liter, 10^{-3} megagrams per kilogram, and 10^{-6} from the parts per million by weight factor (i.e., AC_i)

(2) *Calculate VOC emissions using site-specific modeling for the individual drain system.* For each process wastewater stream and aqueous in-process stream, the owner or operator shall calculate VOC emissions using site-specific modeling for the individual drain system as determined using the procedures specified in appendix J to this part. In addition, for each process wastewater stream and aqueous in-process stream, the owner or operator shall use either the default Fe values for the treatment process or VOC emissions

for the treatment process as specified in this paragraph (f)(2), and use either equation 2 or equation 3 in this paragraph (f)(2). Annual average concentration shall be determined using the procedures specified in paragraph (g)(1) of this section. Annual average flow rate shall be determined using the procedures specified in paragraph (h) of this section. The owner or operator is not required to determine the concentration of VOC that are not reasonably expected to be in the process. The owner or operator is required to consider only VOC included on the stream-specific list of VOC when measuring VOC concentrations. The stream-specific list of VOC shall be determined as specified in § 60.778 of this subpart.

(i) *Determining the Fe value for the treatment process or VOC emissions for the treatment process.* If the treatment process is a biological treatment process, the owner or operator shall use the default Fe values for the treatment process that are listed in table 2 in appendix J of this part. If the treatment process is a non-biological treatment process, the owner or operator shall use performance test data or design evaluations to determine the VOC emissions for all VOC emissions generated by the treatment process as specified in § 60.779(j)(1) of this subpart.

(ii) *Equation 2.* Use equation 2 when the treatment process is a biological treatment process and the default Fe for the treatment process is used. The default Fe values for the treatment process are listed in table 2 in appendix J of this part.

$$\text{VOC emissions} = \text{IDS} + \left[\left(6.0 * 10^{-8}\right) * \text{AQ} * \text{H} \sum_{i=1}^{n} \text{AC}_i * \text{Fet}_i\right] \qquad \text{(Eqn 2)}$$

Where:

VOC emissions=Annual average emissions of VOC for a process wastewater or aqueous in-process stream, megagrams per year.

IDS=VOC emissions from the individual drain system determined as specified in appendix J to part 60, megagram per year.

AQ=Annual average flow rate of the process wastewater stream or aqueous in-process stream, liters per minute.

H=Number of hours during the designated 12-month period that the process wastewater stream or aqueous in-process stream was generated, hours per year.

AC_i=Annual average concentration of VOC i of the process wastewater stream or aqueous in-process stream, parts per million by weight.

Fet_i=Fraction emitted of VOC i for the treatment process, dimensionless. Fe values for the treatment process shall be determined as specified in paragraph (f)(2)(i) of this section.

n=Total number of VOC in process wastewater stream or aqueous in-process stream.

$6.0 * 10^{-8}$=Conversion factor, 1000 kilograms per cubic meter, 60 minutes per hour, 10^{-3} cubic meters per liter, 10^{-3} megagrams per kilogram, and 10^{-6} from the parts per million by weight factor (i.e., Ac_i)

(ii) *Equation 3.* Use equation 3 when the treatment process is a non-biological treatment process and VOC emissions for the treatment process is determined using performance test data or design evaluations.

$$\text{VOC emissions} = \text{IDS} + \text{TP} \qquad \text{(Eqn 3)}$$

Where:

VOC emissions=Annual average emissions of VOC for a process wastewater or aqueous in-process stream, megagrams per year.

IDS=VOC emissions from the individual drain system determined as specified in appendix J to part 60, megagram per year.

TP=VOC emissions from the treatment process determined as specified in paragraph (f)(2)(iii) of this section, megagrams per year.

(3) *Determining annual average VOC mass flow rate as a surrogate for VOC emissions.*

(i) Annual average concentration shall be determined using the procedures specified in paragraph (g)(2) of this section. Method 25D of 40 CFR part 60, appendix A, shall be used to determine annual average concentration.

(ii) Annual average flow rate shall be determined using the procedures specified in paragraph (h) of this section. The owner or operator is not required to determine the concentration of VOC that are not reasonably expected to be in the process. The owner or operator is required to consider only VOC included on the stream-specific list of VOC when measuring VOC concentrations. The stream-specific list of VOC shall be as determined as specified in § 60.778 of this subpart.

(iii) Determine the annual average VOC mass flow rate using equation 2 in paragraph (f)(2) of this section for each individual process wastewater stream at the point of determination and for each aqueous in-process stream.

$$\text{QMW} = \left(6.0 * 10^{-5}\right) * \text{AQ} * \sum_{i=1}^{n} \text{AC}_i \qquad \text{(Eqn 4)}$$

Where:

QMW=Mass flow rate of VOC, for a process wastewater or aqueous in-process stream, kilograms per hour.

AQ=Annual average flow rate of the process wastewater stream or aqueous in-process stream, liters per minute.

AC_i=Annual average concentration of VOC i of the process wastewater stream or aqueous in-process stream, parts per million by weight.

n=Total number of VOC in process wastewater stream or aqueous in-process stream.

p=Density of a process wastewater stream or aqueous in-process stream, kilograms per cubic meter.

$6.0 * 10^{-5}$=Conversion factor, 1000 kilograms per cubic meter, 60 minutes per hour, 10^{-3} cubic meters per liter, and 10^{-6} from the parts per million by weight factor (i.e., AC_i).

(g) *Determining annual average concentration for a process wastewater stream or aqueous in-process stream.* The annual average concentration shall be a flow-weighted average representative of actual or anticipated operation of the designated CPU generating the process wastewater or aqueous in-process stream generated by the designated CPU over the designated 12-month period. Flow-weighted annual average concentration for VOC shall be calculated as the total mass of VOC occurring in the process wastewater stream or aqueous in-process stream during the designated 12-month period divided by the total mass of the process wastewater stream or aqueous in-process stream during the same designated 12-month period. The owner or operator shall determine the annual average concentration using the procedures specified in paragraphs (g)(1)(i) through (g)(1)(iv) of this section. The owner or operator is required to consider only VOC included on the stream-specific list of VOC when measuring VOC concentrations. The stream-specific list of VOC shall be as determined as specified in § 60.778 of this subpart.

(1) *VOC emissions.* When an owner or operator is determining concentration as part of determining annual average VOC emissions under paragraph (f)(1) or paragraph (f)(2) of this section, the procedures in paragraphs (g)(1)(i) through (g)(1)(iv) of this section shall be used.

(i) For process wastewater streams, the annual average concentration shall be determined either at the point of determination or downstream of the point of determination, with adjustment for concentration changes made according to § 60.782(b)(6) of this subpart if a point downstream of the point of determination is used. For aqueous in-process streams, the annual average concentration shall be determined before the point of determination and shall be adjusted for any losses of VOC to the atmosphere and for dilution.

(ii) The procedures specified in § 60.782(b), except for paragraph (b)(5)(i)(A), of this subpart shall be used for determining the annual average concentration. The procedures specified in § 60.782(b) of this subpart may be used in combination, and no one procedure shall take precedence over another.

(iii) A minimum of three wastewater samples from each process wastewater stream or aqueous in-process stream shall be taken. Samples may be grab samples or composite samples.

(iv) Concentration values that are not determined using Method 25D may be adjusted with the chemical's Fm value. Chemical-specific Fm factors shall be determined as specified in appendix J of this part. When Fm adjustments are made, they shall be used for all compounds and in all instances for the purpose of this section.

(2) *VOC mass flow rate.* When an owner or operator is determining concentration as part of determining annual average VOC mass flow rate under paragraph (f)(3) of this section, the procedures specified in paragraph (g)(2)(i) and (g)(2)(ii) of this section shall be used. Measurements shall be taken at the point of determination.

(i) If an owner or operator is measuring concentration as part of determining annual average VOC mass flow rate under paragraph (f)(3) of this section, Method 25D of 40 CFR part 60, appendix A shall be used to determine annual average concentration.

(ii) A minimum of three wastewater samples from each process wastewater stream or aqueous in-process stream shall be taken. Samples may be grab samples or composite samples.

(h) *Determining annual average flow rate for a process wastewater stream or aqueous in-process stream.* The annual average flow rate shall be representative of the process wastewater stream or aqueous in-process stream generated by the designated CPU over the designated 12-month period. The owner or operator shall consider the total annual average wastewater volume generated by the designated CPU. The owner or operator shall determine the annual average flow rate using the procedures specified in paragraphs (h)(1) and (h)(2) of this section.

(1) For process wastewater streams, the annual average flow rate shall be determined either at the point of determination or downstream of the point of determination, with adjustment for flow rate changes made according to § 60.782(c)(4) of this subpart if a point downstream of the point of determination is used. For aqueous in-process streams, the annual average flow rate shall be determined before the point of determination, and the owner or operator shall make corrections if streams are mixed or treated before being measured.

(2) The procedures in § 60.782(c)(1) through (c)(3) of this subpart are considered acceptable procedures for determining flow rate. The procedures in § 60.782(c)(1) through (c)(3) of this subpart may be used in combination, and no one procedure shall take precedence over another.

(i) [Reserved]

(j) *Sum VOC emissions generated by the designated CPU.*—(i) *VOC emissions.* Sum the annual average VOC emissions, as calculated in paragraph (f)(1) or (f)(2) of this section, for each process wastewater stream and each aqueous in-process stream affected by the physical or operational change to determine the annual average VOC emissions for the designated CPU.

(2) *VOC mass flow rate.* Sum the annual average VOC mass flow rate, as calculated in paragraph (f)(3) of this section, for each process wastewater stream affected by the physical or operational change to determine the annual average VOC mass flow rate for the designated CPU. Sum the annual average VOC mass flow rate, as calculated in paragraph (f)(3) of this section, for each aqueous in-process stream affected by the physical or operational change to determine the annual average VOC mass flow rate for the designated CPU. Once a determination has been made that VOC emissions have increased, the owner or operator can elect not to make the other comparison.

(k) *Reconstruction.* (1) For the purposes of this subpart ''fixed capital cost of the new components,'' as used in § 60.15 of this part, includes the fixed capital cost of all depreciable components which are replaced within any 2-year rolling period following September 12, 1994. Replacement costs shall be charged to the first day the owner or operator incurred any expenses involving the actual work of replacement, i.e., the designated CPU has had either components removed in preparation of the replacements or components added as replacements. When replacement of components, e.g., replacing a distillation column, is reasonably viewed as a project, the cost of the entire project shall be charged to the first day the owner or operator incurred any expenses involving the actual work of replacement.

(2) The owner or operator shall either keep a record for the purposes of this subpart or provide on demand documentation kept for financial or tax purposes that documents when costs for replacements were first incurred and the costs of the replacements.

§ 60.773 Process wastewater provisions—General.

(a) *Process wastewater—general.* This paragraph (a) specifies the requirements applicable to process wastewater streams located at affected facilities. The owner or operator shall comply with the requirements in paragraphs (a)(1) through (a)(3) of this section, no later than the applicable dates specified in § 60.770 of this subpart.

(1) *Determine wastewater streams to be controlled.* Determine whether each wastewater stream requires control for VOC by following the requirements in either paragraph (b) of this section, determining Group 1 or Group 2, or paragraph (c) of this section, designating Group 1, and comply with the requirements in paragraph (d) of this section.

(2) *Requirements for Group 1 wastewater streams.* For wastewater streams that are Group 1, comply with paragraphs (a)(2)(i) through (a)(2)(ix) of this section.

(i) Comply with the applicable requirements for wastewater tanks, surface impoundments, containers, individual drain systems, and oil-water separators as specified in § 60.774 of this subpart.

(ii) Comply with the applicable requirements for control of VOC for treatment processes and the test methods and procedures to determine compliance as specified in §§ 60.779 and 60.783 of this subpart. Alternatively, the owner or operator may elect to comply with the treatment provisions specified in paragraph (e) of this section.

(iii) Comply with the applicable control device, leak inspection, and delay of repair provisions as specified in §§ 60.780, 60.786, and 60.777 of this subpart, unless otherwise specified in this subpart.

(iv) Comply with the applicable monitoring requirements specified in § 60.781 of this subpart, unless otherwise specified in this subpart.

(v) Comply with the applicable reporting and recordkeeping requirements specified in §§ 60.784 and 60.785 of this subpart, unless otherwise specified in this subpart.

(3) *Requirements for Group 2 wastewater streams.* For wastewater streams that are Group 2, comply with the applicable reporting and recordkeeping requirements specified in §§ 60.784 and 60.785 of this subpart.

(b) *How to determine Group 1 or Group 2 status.* This paragraph (b) provides instructions for determining whether a process wastewater stream is Group 1 or Group 2. Annual average concentration shall be determined according to the procedures specified in § 60.782(b) of this subpart. Annual average flow rate shall be determined according to the procedures specified in § 60.782(c) of this subpart.

(1) A wastewater stream is a Group 1 wastewater stream if:

(i) The annual average concentration of VOC is greater than or equal to 10,000 parts per million by weight at any flow rate; or

(ii) The annual average concentration of VOC is greater than or equal to 500 parts per million by weight and the annual average flow rate is greater than or equal to 1 liter per minute.

(2) A wastewater stream is a Group 2 wastewater stream if it is not a Group 1 wastewater stream by the criteria in paragraph (b)(1) of this section.

(c) *How to designate a Group 1 wastewater stream.* The owner or operator may elect to designate a wastewater stream as a Group 1 wastewater stream in order to comply with paragraph (a)(1) of this section. To designate a wastewater stream or a mixture of wastewater streams as a Group 1 wastewater stream, the procedures specified in paragraphs (c)(1) and (c)(2) of this section and § 60.782(a)(2) of this subpart shall be followed.

(1) From the point of determination for each wastewater stream that is included in the Group 1 designation to the location where the owner or operator elects to designate such wastewater stream(s) as a Group 1 wastewater stream, the owner or operator shall comply with all applicable emission suppression requirements specified in § 60.774 of this subpart.

(2) From the location where the owner or operator designates a wastewater stream or mixture of wastewater streams to be a Group 1 wastewater stream, such Group 1 wastewater stream shall be managed in accordance with all applicable emission suppression requirements specified in § 60.774 of this subpart and with the treatment requirements in § 60.779 of this subpart.

(d) Owners or operators shall not discard liquid or solid organic materials containing greater than 10,000 parts per million VOC (as determined by analysis of the stream composition, engineering calculations, or process knowledge) from a chemical process unit to water or wastewater, unless the receiving stream is managed and treated as a Group 1 wastewater stream. This prohibition does not apply to materials from the activities listed in paragraphs (d)(1) through (d)(4) of this section.

(1) Equipment leaks;

(2) Activities included in maintenance or startup/shutdown/malfunction plans;

(3) Spills; or

(4) Samples.

(e) *Off-site or third-party treatment.* The owner or operator may elect to transfer a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream to an on-site treatment operation not owned or operated by the owner or operator of the affected facility generating the wastewater stream or residual, or to an off-site treatment operation.

(1) The owner or operator transferring the wastewater stream or residual shall:

(i) Comply with the provisions specified in § 60.774 of this subpart for each waste management unit that receives or manages a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream prior to shipment or transport.

(ii) Include a notice with the shipment or transport of each Group 1 wastewater stream or residual removed from a Group 1 wastewater stream. The notice shall state that the wastewater stream or residual contains VOC that are to be treated in accordance with the provisions of this subpart. When the transport is continuous or ongoing (for example, discharge to a publicly-owned treatment works), the notice shall be submitted to the treatment operator initially and whenever there is a change in the required treatment. These notices shall be retained by the owner or operator as specified in § 60.785(c) of this subpart.

(2) The owner or operator may not transfer the wastewater stream or residual unless the transferee has submitted to EPA a written certification that the transferee will manage and treat any Group 1 wastewater stream or residual removed from a Group 1 wastewater stream received from a affected facility subject to the requirements of this subpart in accordance with the requirements of either §§ 60.774 through 60.786 of this subpart or § 60.787(b) of this subpart if alternative emission limitations have been granted the transferor in accordance with those provisions. The certifying entity may revoke the written certification by sending a written statement to EPA and the owner or operator giving at least 90 days notice that the certifying entity is rescinding acceptance of responsibility for compliance with the regulatory provisions listed in this paragraph (e)(2). Upon expiration of the notice period, the owner or operator may not transfer the wastewater stream or residual to the treatment operation.

(3) By providing this written certification to EPA the certifying entity accepts responsibility for compliance with the regulatory provisions listed in paragraph (e)(2) of this section with respect to any shipment of wastewater or residual covered by the written certification. Failure to abide by any of those provisions with respect to such shipments may result in enforcement action by EPA against the certifying entity in accordance with the enforcement provisions applicable to violations of these provisions by owners or operators of affected facilities.

(4) Written certifications and revocation statements, to EPA from the transferees of wastewater or residuals shall be signed by a responsible official of the certifying entity, provide the name and address of the certifying entity, and be sent to the appropriate EPA Regional Office. Such written certifications are not transferable by the treater.

§ 60.774 Wastewater tank, surface impoundment, container, individual drain system, and oil-water separator provisions.

(a) *Purpose of this section.* (1) This section specifies control requirements for the following waste management units: wastewater tanks, surface impoundments, containers, individual drain systems, and oil-water separators.

(2) For each waste management unit that receives, manages, treats, or otherwise handles a Group 1 wastewater stream or a residual taken from a Group 1 wastewater stream, the owner or operator shall comply with one of the compliance option paragraphs in this section, as appropriate. Paragraphs (a)(2)(i) through (a)(2)(v) of this section list the compliance options and waste management units to which they apply. A waste management unit shall be in compliance with one of the compliance options specified in this section. The same compliance option does not have to be used for all waste management units of the same or different types. A summary of the compliance options available for each waste management unit is provided in Table 3 of this subpart.

(i) *HON.* The provisions of the ''National Emissions Standard for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry,'' also known as the ''HON,'' may be used to comply for all types of waste management units as specified in paragraph (c) of this section. The HON is located in 40 CFR part 63, subparts F and G.

(ii) *Standard-standards.* The provisions of the ''National Emission Standards for Containers,'' the ''National Emission Standards for Surface Impoundments,'' the ''National Emission Standards for Individual Drain Systems,'' and the ''National Emission Standards for Oil-Water Separators and Organic-Water Separators,'' also known as the standard-standards, may be used as a compliance option as specified in paragraph (d) of this section. These standard-standards are located in 40 CFR, part 63, subparts PP, QQ, RR, and VV, respectively.

(iii) *Petroleum Refinery NSPS.* The provisions of the ''Standards of Performance for VOC Emissions from Petroleum Refinery Wastewater Systems'' may be used to comply for individual drain systems as specified in paragraph (e) of this section. The Petroleum Refinery NSPS is located in 40 CFR, part 60, subpart QQQ.

(iv) *RCRA, subpart CC.* The provisions of ''Air Emission Standards for Tanks, Surface Impoundments, and Containers'' may be used to comply for wastewater tanks, surface impoundments, and containers as specified in paragraphs (f) and (g), respectively, of this section. The RCRA, subpart CC rules are located in 40 CFR part 264, subpart CC and 40 CFR, part 265, subpart CC.

(v) *Benzene Waste.* The provisions of the ''National Emission Standard for Benzene Waste Operations'' may be used to comply for all types of waste management units as specified in paragraph (h) of this section. The Benzene Waste rule is located in 40 CFR part 61, subpart FF.

(b) *General requirements.* (1) For each wastewater tank that receives, manages, treats, or otherwise handles a Group 1 wastewater stream or a residual taken from a Group 1 wastewater stream that meets the vapor pressure and capacity cutoffs presented in Table 4 of this subpart. The owner or operator shall choose an appropriate control requirement for wastewater tanks as specified in Table 4 of this subpart.

(2) Table 5 of this subpart provides a summary of the requirements of each compliance option.

(3) *Inspection requirements.* When complying with one of the six control requirement options for waste management units, listed in Table 3 of this subpart, the owner or operator shall comply with the applicable inspection provisions corresponding to the selected control requirement option.

(4) *Definition requirements.* When definitions differ between this subpart and one of the six compliance options, the definitions in this subpart shall apply, unless the specified term in the selected compliance option is not defined in this subpart. In such cases, the definitions from the selected compliance option shall apply.

(5) Owners or operators shall specify the control option used for each waste management unit as specified in § 60.784(c) of this subpart.

(c) *Requirements for Hazardous Organic NESHAP (HON) compliance option.* Owners or operators selecting the HON compliance option shall comply with paragraph (c)(1) of this section and with paragraph (c)(2) or (c)(3) of this section.

(1) The owner or operator of a waste management unit that is subject to both 40 CFR part 63, subparts F and G (HON) and this subpart shall comply with either paragraph (c)(2) or (c)(3) of this section. The owner or operator of a waste management unit that is subject to this subpart but not subject to the HON shall comply with paragraph (c)(3) of this section.

(2) Comply with the applicable requirements specified in 40 CFR 63.133 through 63.137, except as specified in paragraphs (c)(2)(i)(A) through (c)(2)(i)(H) of this section. Comply with the control device provisions, delay of repair provisions, and leak inspection provisions specified in 40 CFR 63.139, 63.140, and 63.148 and with the monitoring, reporting, and recordkeeping provisions specified in 40 CFR 63.143, 63.146, and 63.147, except as specified in paragraphs (c)(2)(ii) through (c)(2)(vii) of this section.

(i) The following exceptions apply to the provisions of 40 CFR 63.133 through 63.137:

(A) Waste management units may be equipped with pressure relief devices that vent directly to the atmosphere, provided the pressure relief device is not used for planned or routine venting of VOC emissions.

(B) All pressure relief devices shall remain in a closed position at all times except when it is necessary for the pressure relief device to open for the purpose of preventing physical damage or permanent deformation of the waste management unit in accordance with good engineering and safety practices.

(C) When the term ''organic HAP emissions'' or ''organic hazardous air pollutants emissions'' is used in 40 CFR 63.133, the term ''VOC emissions'' shall apply for the purposes of this subpart.

(D) When the term ''organic HAP vapors'' or ''organic hazardous air pollutants vapors'' is used in 40 CFR 63.133, 63.135, and 63.137, the term ''VOC vapors'' shall apply for the purposes of this subpart.

(E) When the terms ''Group 1 wastewater stream'' or ''Group 2 wastewater stream'' are used in 40 CFR

63.133, the definitions of these terms contained in § 60.773(b) shall apply for the purposes of this subpart.

(F) When the determination of equivalence criteria in 40 CFR 63.102(b) of subpart F is referred to in 40 CFR 63.133 and 63.137, the provisions in § 60.787(b) of this subpart shall apply for the purposes of this subpart.

(G) When the Notification of Compliance Status requirements in 40 CFR 63.152(b) are referred to in 40 CFR 63.133 and 63.137, the provisions in § 60.784(c) of this subpart shall apply for the purposes of this subpart. In addition, when information is required to be reported according to 40 CFR 63.152(b) in the Notification of Compliance Status, the information shall be reported in the Notification of Compliance Status required by § 60.784(c) of this subpart for the purposes of this subpart.

(H) When the inspection requirements for waste management units in table 11 of the appendix to subpart G of 40 CFR part 63 are referred to in 40 CFR 63.136, table 11 of the appendix to subpart G of 40 CFR part 63 shall apply for the purposes of this subpart.

(ii) The following exceptions apply to the provisions of 40 CFR 63.139:

(A) Waste management units may be equipped with pressure relief devices that vent directly to the atmosphere, provided the pressure relief device is not used for planned or routine venting of VOC emissions.

(B) All pressure relief devices shall remain in a closed position at all times except when it is necessary for the pressure relief device to open for the purpose of preventing physical damage or permanent deformation of the waste management unit in accordance with good engineering and safety practices.

(C) When the term ''organic HAP emissions'' or ''organic hazardous air pollutants emissions'' is used in 40 CFR 63.139, the term ''VOC emissions'' shall apply for the purposes of this subpart.

(D) When the term ''organic HAP concentration'' or ''organic hazardous air pollutants concentration'' is used in 40 CFR 63.139, the term ''VOC concentration'' shall apply for the purposes of this subpart.

(E) When the performance standards for treatment processes managing Group 1 wastewater streams and/or residuals removed from Group 1 wastewater streams provisions in 40 CFR 63.138 are referred to in 40 CFR 63.139, the provisions in § 60.779 shall apply for the purposes of this subpart.

(F) When the test methods and procedures to determine compliance requirements in 40 CFR 63.145(i) are referred to in 40 CFR 63.139, the provisions in § 60.783(i) of this subpart shall apply for the purposes of this subpart.

(G) When the compliance demonstration for flares requirements in 40 CFR 63.145(j) are referred to in 40 CFR 63.139, the provisions in § 60.783(j) of this subpart shall apply for the purposes of this subpart.

(iii) The following exceptions apply to the provisions of 40 CFR 63.140:

(A) Waste management units may be equipped with pressure relief devices that vent directly to the atmosphere, provided the pressure relief device is not used for planned or routine venting of VOC emissions.

(B) All pressure relief devices shall remain in a closed position at all times except when it is necessary for the pressure relief device to open for the purpose of preventing physical damage or permanent deformation of the waste management unit in accordance with good engineering and safety practices.

(iv) The following exceptions apply to the provisions of 40 CFR 63.143:

(A) Waste management units may be equipped with pressure relief devices that vent directly to the atmosphere, provided the pressure relief device is not used for planned or routine venting of VOC emissions.

(B) All pressure relief devices shall remain in a closed position at all times except when it is necessary for the pressure relief device to open for the purpose of preventing physical damage or permanent deformation of the waste management unit in accordance with good engineering and safety practices.

(C) When the definitions in 40 CFR 63.101 of subpart F or in 40 CFR 63.111 are referred to in 40 CFR 63.143, the provisions in § 60.771 of this subpart shall apply for the purposes of this subpart.

(D) When the performance standards for treatment processes managing Group 1 wastewater streams and/or residuals removed from Group 1 wastewater streams provisions in 40 CFR 63.138 are referred to in 40 CFR 63.143, the provisions in § 60.779 shall apply for the purposes of this subpart.

(E) When the request for approval to monitor alternative parameters requirements in 40 CFR 63.151(f) are referred to in 40 CFR 63.143 the provisions in § 60.784(b)(6) of this subpart shall apply for the purposes of this subpart.

(v) The following exceptions apply to the provisions of 40 CFR 63.146:

(A) Waste management units may be equipped with pressure relief devices that vent directly to the atmosphere, provided the pressure relief device is not used for planned or routine venting of VOC emissions.

(B) All pressure relief devices shall remain in a closed position at all times except when it is necessary for the pressure relief device to open for the purpose of preventing physical damage or permanent deformation of the waste management unit in accordance with good engineering and safety practices.

(C) When the Notification of Compliance Status requirements in 40 CFR 63.152(b) are referred to in 40 CFR 63.146, the provisions in § 60.784(c) of this subpart shall apply for the purposes of this subpart. In addition, when information is required to be reported according to 40 CFR 63.152(b) in the Notification of Compliance Status, the information shall be reported in the Notification of Compliance Status required by § 60.784(c) for the purposes of this subpart.

(D) When the inspection requirements for waste management units in table 11 of the appendix to subpart G of 40 CFR part 63 are referred to in 40 CFR 63.146, table 11 of the appendix to subpart G of 40 CFR part 63 shall apply for the purposes of this subpart.

(E) When the performance standards for treatment processes managing Group 1 wastewater streams and/or residuals removed from Group 1 wastewater streams provisions in 40 CFR 63.138 are referred to in 40 CFR 63.146, the provisions in § 60.779 shall apply for the purposes of this subpart.

(F) When the request for approval to monitor alternative parameters requirements in 40 CFR 63.151(f) are referred to in 40 CFR 63.146, the provisions in § 60.784(b)(6) of this subpart shall apply for the purposes of this subpart.

(G) When the Periodic Report requirements in 40 CFR 63.152(c) are referred to in 40 CFR 63.146, the provisions in 40 CFR 63.152(c) of this subpart that are applicable to waste management units shall apply for the purposes of submitting semiannual reports in this subpart. In addition, when information is required to be reported according to 40 CFR 63.152(c) in the Periodic Report, the information shall be reported in the semiannual report required by 40 CFR 63.152(c) for the purposes of this subpart.

(vi) The following exceptions apply to the provisions of 40 CFR 63.147:

(A) Waste management units may be equipped with pressure relief devices that vent directly to the atmosphere, provided the pressure relief device is not used for planned or routine venting of VOC emissions.

(B) All pressure relief devices shall remain in a closed position at all times

except when it is necessary for the pressure relief device to open for the purpose of preventing physical damage or permanent deformation of the waste management unit in accordance with good engineering and safety practices.

(C) When the term ''organic hazardous air pollutants'' is used in 40 CFR 63.147, the term ''VOC'' shall apply for the purposes of this subpart.

(D) When the third-party treatment requirements in 40 CFR 63.132(g) are referred to in 40 CFR 63.147, the provisions in § 60.773(e) shall apply for the purposes of this subpart.

(E) When the process knowledge of the wastewater requirements in 40 CFR 63.144(b)(3) or (c)(1) are referred to in 40 CFR 63.147, the provisions in § 60.782(b)(3) or (c)(1) shall apply for the purposes of this subpart.

(F) When the continuous records requirements in 40 CFR 63.152(f) are referred to in 40 CFR 63.147, the provisions in § 60.785(e) of this subpart shall apply for the purposes of this subpart.

(vii) The following exceptions apply to the provisions of 40 CFR 63.148:

(A) Waste management units may be equipped with pressure relief devices that vent directly to the atmosphere, provided the pressure relief device is not used for planned or routine venting of VOC emissions.

(B) All pressure relief devices shall remain in a closed position at all times except when it is necessary for the pressure relief device to open for the purpose of preventing physical damage or permanent deformation of the waste management unit in accordance with good engineering and safety practices.

(3) Comply with the applicable requirements specified in 40 CFR 63.133 through 63.137, except as specified in paragraphs (c)(3)(i) and (c)(3)(xiii) of this section. Comply with the control device provisions, delay of repair provisions, and leak inspection provisions specified in §§ 60.780, 60.777, and 60.786 of this subpart and with the monitoring, reporting, and recordkeeping provisions specified in §§ 60.781, 60.784, and 60.785 of this subpart.

(i) Waste management units may be equipped with pressure relief devices that vent directly to the atmosphere, provided the pressure relief device is not used for planned or routine venting of VOC emissions.

(ii) All pressure relief devices shall remain in a closed position at all times except when it is necessary for the pressure relief device to open for the purpose of preventing physical damage or permanent deformation of the waste management unit in accordance with good engineering and safety practices.

(iii) When the term ''organic HAP emissions'' or ''organic hazardous air pollutants emissions'' is used in 40 CFR 63.133, the term ''VOC emissions'' shall apply for the purposes of this subpart.

(iv) When the term ''organic HAP vapors'' or ''organic hazardous air pollutants vapors'' is used in 40 CFR 63.133, 63.135, and 63.137, the term ''VOC vapors'' shall apply for the purposes of this subpart.

(v) When the terms ''Group 1 wastewater stream'' or ''Group 2 wastewater stream'' are used in 40 CFR 63.133, the definitions of these terms contained in § 60.773(b) shall apply for the purposes of this subpart.

(vi) When the determination of equivalence criteria in 40 CFR 63.102(b) of subpart F is referred to in 40 CFR 63.133 and 63.137, the provisions in § 60.787(b) of this subpart shall apply for the purposes of this subpart.

(vii) When the control device provisions for process wastewater in 40 CFR 63.139 are referred to in 40 CFR 63.133, 63.134, 63.135, 63.136, 63.137, the provisions in § 60.780 shall apply for the purposes of this subpart.

(viii) When the delay of repair provisions in 40 CFR 63.140 are referred to in 40 CFR 63.133, 63.134, 63.135, 63.136, 63.137, the provisions in § 60.777 shall apply for the purposes of this subpart.

(ix) When the inspection and monitoring of operations provisions in 40 CFR 63.143 are referred to in 40 CFR 63.133, 63.134, 63.135, 63.137, the provisions in § 60.781 shall apply for the purposes of this subpart.

(x) When the leak inspection provisions in 40 CFR 63.148 are referred to in 40 CFR 63.133, 63.134, 63.135, 63.136, and 63.137, the provisions in § 60.786 shall apply for the purposes of this subpart.

(xi) When the Notification of Compliance Status requirements in 40 CFR 63.152(b) are referred to in 40 CFR 63.133 and 63.137, the provisions in § 60.784(c) of this subpart shall apply for the purposes of this subpart. In addition, when information is required to be reported according to 40 CFR 63.152(b) in the Notification of Compliance Status, the information shall be reported in the Notification of Compliance Status required by § 60.784(c) for the purposes of this subpart.

(xii) When the compliance options for wastewater tanks requirements in table 10 of the appendix to subpart G of 40 CFR part 63 are referred to in 40 CFR 63.133, table 4 of this subpart shall apply for the purposes of this subpart.

(xiii) When the inspection requirements for waste management units in table 11 of the appendix to subpart G of 40 CFR part 63 are referred to in 40 CFR 63.136, table 11 of the appendix to subpart G of 40 CFR part 63 shall apply for the purposes of this subpart.

(d) *Requirements for Standard-standards compliance option.* Owners or operators selecting the Standard-standards compliance option shall comply with paragraph (d)(1) or (d)(2) of this section. The Standard-standards compliance option includes requirements for surface impoundments specified in 40 CFR part 63, subpart QQ, containers specified in 40 CFR part 63, subpart PP, individual drain systems specified in 40 CFR part 63, subpart RR, and oil-water separators specified in 40 CFR part 63, subpart VV.

(1) Comply with the applicable requirements specified in paragraphs (d)(1)(i) through (d)(1)(iv) of this section, as applicable.

(i) *Surface impoundments.* Comply with the surface impoundment requirements specified in 40 CFR 63.942 and 63.943, except as specified in paragraph (d)(1)(i)(A) of this section. Comply with the inspection provisions specified in 40 CFR 63.946, the test methods and procedures (i.e., leak inspection provisions) specified in 40 CFR 63.945, the delay of repair provisions specified in 40 CFR 63.946(c), and with the monitoring, reporting, and recordkeeping provisions specified in 40 CFR 63.946, 63.948, and 63.947, except as specified in paragraphs (d)(1)(i)(B) through (d)(1)(i)(E) of this section.

(A) The following exceptions apply to the provisions of 40 CFR 63.942 and 63.943:

(*1*) When the term ''air emissions'' is used in 40 CFR 63.942 and 63.943, the term ''VOC emissions'' shall apply for purposes of this subpart.

(*2*) When the term ''organic vapor permeability'' is used in 40 CFR 63.942 and 63.943, the term ''VOC permeability'' shall apply for purposes of this subpart.

(*3*) For purposes of this subpart, when the provisions of 40 CFR 63.941 are referred to in 40 CFR 63.942 and 63.943, the provisions of § 60.771 shall apply, unless the specified term in 40 CFR 63.942 and 63.943 is not defined in § 60.771, in such cases the provisions of 40 CFR 63.941 shall apply.

(*4*) When the closed-vent system and control device design and operation requirements in 40 CFR 63.693 of 40 CFR part 63, subpart DD, are referred to in 40 CFR 63.943(b)(4), the provisions in

§§ 60.780 and 60.786 shall apply for purposes of this subpart.

(*5*) When the term ''air emission control equipment'' is used in 40 CFR 63.942 and 63.943, the term ''VOC emission control equipment'' shall apply for purposes of this subpart.

(B) The following exceptions apply to the provisions of 40 CFR 63.945:

(*1*) When the term ''organic HAP concentration'' is used in 40 CFR 63.945, the term ''VOC concentration'' shall apply for purposes of this subpart.

(*2*) When the term ''organic constituents'' or ''individual organic constituent'' is used in 40 CFR 63.945, the term ''VOC constituents'' or ''individual VOC constituents'' shall apply for purposes of this subpart.

(*3*) When the term ''maximum organic concentration'' is used in 40 CFR 63.945, the term ''maximum VOC concentration'' shall apply for purposes of this subpart.

(C) The following exceptions apply to the provisions of 40 CFR 63.946:

(*1*) When the term ''air emissions'' is used in 40 CFR 63.946, the term ''VOC emissions'' shall apply for purposes of this subpart.

(*2*) When the term ''air emissions control equipment'' is used in 40 CFR 63.946, the term ''VOC emissions control equipment'' shall apply for purposes of this subpart.

(*3*) When the closed-vent system and control device design and operation requirements in 40 CFR 63.693 of 40 CFR part 63, subpart DD, are referred to in 40 CFR 63.946, the inspection and monitoring requirements in § 60.781 shall apply for purposes of this subpart.

(D) The following exception applies to the provisions of 40 CFR 63.947: When the closed-vent system and control device design and operation requirements in § 63.693 of 40 CFR part 63, subpart DD, are referred to in 40 CFR 63.947, the recordkeeping requirements for closed-vent systems and control devices specified in 40 CFR 63.785 shall apply for purposes of this subpart.

(E) The following exception applies to the provisions of 40 CFR 63.948: When the closed-vent system and control device design and operation requirements in § 63.693 of 40 CFR part 63, subpart DD, are referred to in 40 CFR 63.948, the reporting requirements for closed-vent systems and control devices specified in 40 CFR 63.784 shall apply.

(ii) *Containers*. Comply with the container requirements for Level 1 and Level 2 containers specified in 40 CFR 63.922 and 63.923, except as specified in paragraph (d)(1)(ii)(A) of this section. Containers with a design capacity greater than 0.42 m^3 shall be Level 2 containers. Containers with a design capacity greater than or equal to 0.1 m^3 and less than or equal to 0.42 m^3 shall be Level 1 containers. Other storage units with capacities less than 0.1 m^3 are not containers for the purpose of this subpart. The requirements for Level 3 containers do not apply for the purposes of this subpart. Comply with the inspection requirements specified in 40 CFR 63.926, the test methods and procedures (i.e., leak inspection provisions and the procedures for determining a container to be vapor tight) specified in 40 CFR 63.925, the delay of repair provisions specified in 40 CFR 63.926(a)(3), and with the monitoring provisions specified in 40 CFR 63.926, except as specified in paragraph (d)(1)(ii)(B) and (d)(1)(ii)(C) of this section. Comply with the reporting and recordkeeping provisions specified in §§ 60.784 and 60.785 of this subpart.

(A) The following exceptions apply to the provisions of 40 CFR 63.922 and 63.923:

(*1*) When the term ''air emissions'' is used in 40 CFR 63.922 and 63.923, the term ''VOC emissions'' shall apply for purposes of this subpart.

(*2*) When the term ''organic vapor-suppressing barrier'' or ''organic vapor-suppressing foam'' is used in 40 CFR 63.922 and 63.923, the term ''VOC vapor-suppressing barrier'' or ''VOC vapor-suppressing foam'' shall apply for purposes of this subpart.

(*3*) When the term ''organic vapor permeability'' is used in 40 CFR 63.922 and 63.923, the term ''VOC vapor permeability'' shall apply for purposes of this subpart.

(*4*) For purposes of this subpart, when the provisions of 40 CFR 63.921 are referred to in 40 CFR 63.922 and 63.923, the provisions of § 60.771 shall apply, unless the specified term in 40 CFR 63.922 and 63.923 is not defined in § 60.771, in such cases the provisions of 40 CFR 63.921 shall apply.

(B) The following exceptions apply to the provisions of 40 CFR 63.925:

(*1*) When the term ''no detectable organic emissions'' is used in 40 CFR 63.925, the term ''no detectable VOC emissions'' shall apply for purposes of this subpart.

(*2*) When the term ''organic vapor leakage'' is used in 40 CFR 63.925, the term ''VOC leakage'' shall apply for purposes of this subpart.

(*3*) When the term ''organic HAP concentration'' is used in 40 CFR 63.925, the term ''VOC concentration'' shall apply for purposes of this subpart.

(*4*) When the term ''organic constituents'' or ''organic constituent'' is used in 40 CFR 63.925, the term ''VOC constituents'' or ''VOC constituent'' shall apply for purposes of this subpart.

(*5*) When the term ''maximum organic concentration'' is used in 40 CFR 63.925, the term ''maximum VOC concentration'' shall apply for the purposes of this subpart.

(C) The following exception applies to the provisions of 40 CFR 63.926: When the Container Level 3 controls in 40 CFR 63.924 are referred to in 40 CFR 63.926, these provisions do not apply for purposes of this subpart.

(iii) *Individual drain systems*. Comply with the individual drain system requirements specified in 40 CFR 63.962, except as specified in paragraph (d)(1)(iv)(A) of this section. Comply with the inspection provisions in 40 CFR 63.964, the leak inspection provisions in § 60.786 of this subpart, the delay of repair provisions specified in 40 CFR 63.964(b), and with the monitoring, reporting, and recordkeeping provisions specified in 40 CFR 63.964, 63.966, and 63.965, except as specified in paragraph (d)(1)(iv)(B) of this section.

(A) The following exceptions apply to the provisions of 40 CFR 63.962:

(*1*) When the term ''air emissions'' is used in 40 CFR 63.962 , the term ''VOC emissions'' shall apply for purposes of this subpart.

(*2*) When the term ''air emission control equipment'' is used in 40 CFR 63.962, the term ''VOC emission control equipment'' shall apply for purposes of this subpart.

(*3*) When the closed-vent system and control device design and operation requirements in § 63.693 of 40 CFR part 63, subpart DD, are referred to in 40 CFR 63.962, the provisions in §§ 60.780 and 60.786 shall apply for purposes of this subpart.

(*4*) When the term ''organic vapors'' is used in 40 CFR 63.962, the term ''VOC'' shall apply for purposes of this subpart.

(B) The following exceptions apply to the provisions of 40 CFR 63.964:

(*1*) When the term ''air emissions'' is used in 40 CFR 63.964 , the term ''VOC emissions'' shall apply for purposes of this subpart.

(*2*) When the closed-vent system and control device design and operation requirements in § 63.693 of 40 CFR part 63, subpart DD, are referred to in 40 CFR 63.964, the provisions in §§ 60.780 and 60.786 shall apply for purposes of this subpart.

(iv) *Oil-water separators*. Comply with the oil-water separator requirements specified in 40 CFR 63.1042, 63.1043, and 63.1044, except as specified in paragraph (d)(1)(iv)(A) of this section. For portions of the separator where it is infeasible to install and operate a floating roof, such as over a weir mechanism, the owner or

operator shall comply with 40 CFR 63.1044. Comply with the inspection provisions specified in 40 CFR 63.1047, test methods and procedures (i.e., leak inspection provisions and floating roof gap seal measurements) specified in 40 CFR 63.1046, the delay of repair provisions specified in 40 CFR 63.1047(d), and with the monitoring, reporting, and recordkeeping provisions specified in 40 CFR 63.1047, 63.1049, and 63.1048, except as specified in paragraphs (d)(1)(iv)(B) through (d)(1)(iv)(E) of this section.

(A) The following exceptions apply to the provisions of 40 CFR 63.1042 through 63.1044:

(*1*) When the term ''air emissions'' is used in 40 CFR 63.1042 through 63.1044, the term ''VOC emissions'' shall apply for purposes of this subpart.

(*2*) When the term ''organic vapor permeability'' is used in 40 CFR 63.942 and 63.943, the term ''VOC permeability'' shall apply for purposes of this subpart.

(*3*) For purposes of this subpart, when the provisions of 40 CFR 63.1041 are referred to in 40 CFR 63.1042 through 63.1044, the provisions of § 60.771 shall apply, unless the specified term in 40 CFR 63.1042 through 63.1044 is not defined in § 60.771, in such cases the provisions of 40 CFR 63.1041 shall apply.

(*4*) When the closed-vent system and control device design and operation requirements in § 63.693 of 40 CFR part 63, subpart DD, are referred to in 40 CFR 63.1044(b)(4), the provisions in §§ 60.780 and 60.786 shall apply for purposes of this subpart.

(B) The following exceptions apply to the provisions of 40 CFR 63.1046:

(*1*) When the term ''organic HAP concentration'' is used in 40 CFR 63.1046, the term ''VOC concentration'' shall apply for purposes of this subpart.

(*2*) When the term ''organic emissions'' is used in 40 CFR 63.1046, the term ''VOC emissions'' shall apply for purposes of this subpart.

(*3*) When the term ''organic vapor leakage'' is used in 40 CFR 63.1046, the term ''VOC leakage'' shall apply for purposes of this subpart.

(C) The following exceptions apply to the provisions of 40 CFR 63.1047:

(*1*) When the term ''air emissions'' is used in 40 CFR 63.1042 through 63.1044, the term ''VOC emissions'' shall apply for purposes of this subpart.

(*2*) When the closed-vent system and control device design and operation requirements in § 63.693 of 40 CFR part 63, subpart DD, are referred to in 40 CFR 63.1044(b)(4), the provisions in §§ 60.780 and 60.786 shall apply for the purposes of this subpart.

(D) The following exception applies to the provisions of 40 CFR 63.1048: When the closed-vent system and control device design and operation requirements in § 63.693 of 40 CFR part 63, subpart DD, are referred to in 40 CFR 63.1048(c), the recordkeeping requirements for closed-vent systems and control devices specified in 40 CFR 63.785 shall apply for purposes of this subpart.

(E) The following exception applies to the provisions of 40 CFR 63.1049: When the closed-vent system and control device design and operation requirements in § 63.693 of 40 CFR part 63, subpart DD, are referred to in 40 CFR 63.1049(b), the reporting requirements for closed-vent systems and control devices specified in 40 CFR 63.784 shall apply.

(2) Comply with the applicable requirements specified in paragraphs (d)(2)(i) through (d)(2)(iv) of this section, as applicable.

(i) *Surface impoundments.* Comply with the surface impoundment requirements specified in 40 CFR 63.942 and 63.943, except as specified in paragraph (d)(2)(i)(A) of this section. Comply with the inspection provisions specified in 40 CFR 63.946, except as specified in paragraph (d)(2)(i)(B) of this section. Comply with the control device, delay of repair, and leak inspection provisions specified in §§ 60.780, 60.777, and 60.786 of this subpart, and the monitoring, reporting, and recordkeeping provisions specified in §§ 60.781, 60.784, and 60.785.

(A) The following exceptions apply to the provisions of 40 CFR 63.942 and 63.943:

(*1*) When the term ''air emissions'' is used in 40 CFR 63.942 and 63.943, the term ''VOC emissions'' shall apply for purposes of this subpart.

(*2*) When the term ''organic vapor permeability'' is used in 40 CFR 63.942 and 63.943, the term ''VOC permeability'' shall apply for purposes of this subpart.

(*3*) For purposes of this subpart, when the provisions of 40 CFR 63.941 are referred to in 40 CFR 63.942 and 63.943, the provisions of § 60.771 shall apply, unless the specified term in 40 CFR 63.942 and 63.943 is not defined in § 60.771, in such cases the provisions of 40 CFR 63.941 shall apply.

(*4*) When the closed-vent system and control device design and operation requirements in § 63.693 of 40 CFR part 63, subpart DD, are referred to in 40 CFR 63.943(b)(4), the provisions in §§ 60.780 and 60.786 shall apply for purposes of this subpart.

(*5*) When the term ''air emission control equipment'' is used in 40 CFR 63.942 and 63.943, the term ''VOC emission control equipment'' shall apply for purposes of this subpart.

(*6*) When the requirements for no detectable emissions in 40 CFR 63.945(a) are referred to in 40 CFR 63.943, the provisions in § 60.786 shall apply for purposes of this subpart.

(*7*) When the inspection provisions specified in 40 CFR 63.946(a) are referred to in 40 CFR 63.942, the requirements of 40 CFR 63.946(a)(3) and (a)(4) do not apply for purposes of this subpart.

(*8*) When the closed-vent system and control device design and operation requirements in § 63.693 of 40 CFR part 63, subpart DD, are referred to in 40 CFR 63.942, the provisions in §§ 60.780 and 60.786 shall apply for the purposes of this subpart.

(*9*) When the inspection provisions specified in 40 CFR 63.946(b) are referred to in 40 CFR 63.943, the requirements of 40 CFR 63.946(b)(1)(iii), (b)(1)(iv), and (b)(2) do not apply for purposes of this subpart.

(B) The following exceptions apply to the provisions of 40 CFR 63.946:

(*1*) When the term ''air emissions'' is used in 40 CFR 63.946, the term ''VOC emissions'' shall apply for purposes of this subpart.

(*2*) When the recordkeeping provisions of 40 CFR 63.947(a)(2) are referred to in § 63.946, the provisions of § 60.785 shall apply.

(*3*) When the term ''air emissions control equipment'' is used in 40 CFR 63.946, the term ''VOC emissions control equipment'' shall apply for purposes of this subpart.

(*4*) When the closed-vent system and control device design and operation requirements in § 63.693 of 40 CFR part 63, subpart DD, are referred to in 40 CFR 63.946, the inspection and monitoring requirements in § 60.781 shall apply for purposes of this subpart.

(*5*) When the inspection record specified in 40 CFR 63.947(a)(2) is referred to in 40 CFR 63.946, the applicable provisions in § 60.785 shall apply for the purposes of this subpart.

(ii) *Containers.* Comply with the container requirements specified in 40 CFR 63.922 and 63.923, except as specified in paragraph (d)(2)(ii)(A) of this section. Comply with the inspection provisions specified in 40 CFR 63.926, except as specified in paragraph (d)(2)(ii)(B) of this section. Comply with the control device, delay of repair, and leak inspection provisions specified in §§ 60.780, 60.777, and 60.786 of this subpart, and the monitoring, reporting, and recordkeeping provisions specified in §§ 60.781, 60.784, and 60.785.

(A) The following exceptions apply to the provisions of 40 CFR 63.922 and 63.923:

(*1*) When the term ''air emissions'' is used in 40 CFR 63.922 and 63.923, the term ''VOC emissions'' shall apply for purposes of this subpart.

(*2*) When the term ''organic vapor-suppressing barrier'' or ''organic vapor-suppressing foam'' is used in 40 CFR 63.922 and 63.923, the term ''VOC vapor-suppressing barrier'' or ''VOC vapor-suppressing foam'' shall apply for purposes of this subpart.

(*3*) When the term ''organic vapor permeability'' is used in 40 CFR 63.922 and 63.923, the term ''VOC vapor permeability'' shall apply for purposes of this subpart.

(*4*) For purposes of this subpart, when the provisions of 40 CFR 63.921 are referred to in 40 CFR 63.922 and 63.923, the provisions of § 60.771 shall apply, unless the specified term in 40 CFR 63.922 and 63.923 is not defined in § 60.771, in such cases the provisions of 40 CFR 63.921 shall apply.

(*5*) When the requirements for no detectable organic emissions in 40 CFR 63.926(a) are referred to in 40 CFR 63.922, the requirements in § 60.786 shall apply for purposes of this subpart.

(B) The following exception applies to the provisions of 40 CFR 63.926: When the Container Level 3 controls in 40 CFR 63.924 are referred to in 40 CFR 63.926, these provisions do not apply for purposes of this subpart.

(iii) *Individual drain systems.* Comply with the individual drain system requirements specified in 40 CFR 63.962, except as specified in paragraph (d)(2)(iii)(A) of this section. Comply with the inspection provisions specified in 40 CFR 63.964, except as specified in paragraph (d)(2)(iii)(B) of this section. Comply with the control device, delay of repair, and leak inspection provisions specified in §§ 60.780, 60.777, and 60.786 of this subpart, and the monitoring, reporting, and recordkeeping provisions specified in §§ 60.781, 60.784, and 60.785.

(A) The following exceptions apply to the provisions of 40 CFR 63.962:

(*1*) When the term ''air emissions'' is used in 40 CFR 63.962, the term ''VOC emissions'' shall apply for purposes of this subpart.

(*2*) When the term ''air emission control equipment'' is used in 40 CFR 63.962, the term ''VOC emission control equipment'' shall apply for purposes of this subpart.

(*3*) When the closed-vent system and control device design and operation requirements in § 63.693 of 40 CFR part 63, subpart DD, are referred to in 40 CFR 63.962, the provisions in §§ 60.780 and 60.786 shall apply for purposes of this subpart.

(*4*) When the term ''organic vapors'' is used in 40 CFR 63.962, the term ''VOC'' shall apply for purposes of this subpart.

(B) The following exceptions apply to the provisions of 40 CFR 63.964:

(*1*) When the term ''air emissions'' is used in 40 CFR 63.964, the term ''VOC emissions'' shall apply for purposes of this subpart.

(*2*) When the closed-vent system and control device design and operation requirements in § 63.693 of 40 CFR part 63, subpart DD, are referred to in 40 CFR 63.964, the provisions in §§ 60.780 and 60.786 shall apply for purposes of this subpart.

(*3*) When the record of inspection specified in 40 CFR 63.965(a) or (a)(3) is referred to in 40 CFR 63.964, the applicable provisions in § 60.785 shall apply for purposes of this subpart.

(iv) *Oil-water separators.* Comply with the oil-water separator requirements specified in 40 CFR 63.1042, 63.1043, and 63.1044, except as specified in paragraphs (d)(2)(iv)(A) through (d)(2)(iv)(H) of this section. For portions of the separator where it is infeasible to install and operate a floating roof, such as over a weir mechanism, the owner or operator shall comply with 40 CFR 63.1044. Comply with the control device, delay of repair, and leak inspection provisions specified in §§ 60.780, 60.777, and 60.786 of this subpart and with the monitoring, reporting, and recordkeeping provisions specified in §§ 60.781, 60.784, and 60.785.

(A) When the term ''air emissions'' is used in 40 CFR 63.1042 through 63.1044, the term ''VOC emissions'' shall apply for purposes of this subpart.

(B) When the term ''organic vapor permeability'' is used in 40 CFR 63.942 and 63.943, the term ''VOC permeability'' shall apply for purposes of this subpart.

(C) For purposes of this subpart, when the provisions of 40 CFR 63.1041 are referred to in 40 CFR 63.1042 through 63.1044, the provisions of § 60.771 shall apply, unless the specified term in 40 CFR 63.1042 through 63.1044 is not defined in § 60.771, in such cases the provisions of 40 CFR 63.1041 shall apply.

(D) When the requirements for no detectable organic emissions in 40 CFR 63.1046(a) are referred to in 40 CFR 63.1042 and 63.1044, the provisions in § 60.786 shall apply for purposes of this subpart.

(E) When the inspection provisions specified in 40 CFR 63.1047(a) are referred to in 40 CFR 63.1042(d), the requirements of 40 CFR 63.1047(a)(3) and (a)(4) do not apply for purposes of this subpart.

(F) When the inspection provisions specified in 40 CFR 63.1047(b) are referred to in 40 CFR 63.1043(d), the requirements of 40 CFR 63.1047(b)(1)(iv), (b)(1)(v), (b)(2)(iii), and (b)(2)(iv) do not apply for purposes of this subpart.

(G) When the inspection and monitoring provisions specified in 40 CFR 63.1047(c) are referred to in 40 CFR 63.1044(d), the requirements of 40 CFR 63.1047(c)(1)(iii), (c)(1)(iv), and (c)(2) do not apply for purposes of this subpart.

(H) When the closed-vent system and control device design and operation requirements in § 63.693 of 40 CFR part 63, subpart DD, are referred to in 40 CFR 63.1044(b)(4), the provisions in §§ 60.780 and 60.786 shall apply for purposes of this subpart.

(e) *Requirements for Petroleum Refinery Wastewater Systems NSPS compliance option.* Owners or operators selecting the Petroleum Refinery compliance option shall comply with paragraph (e)(1) of this section and with paragraph (e)(2) or (e)(3) of this section.

(1) The owner or operator of an individual drain system that is subject to both 40 CFR part 60, subpart QQQ and this subpart shall comply with either paragraph (e)(2) or (e)(3) of this section. The owner or operator of an individual drain system that is subject to this subpart but not subject to 40 CFR part 60, subpart QQQ shall comply with paragraph (e)(3) of this section.

(2) Comply with the applicable requirements specified in 40 CFR 60.693–1(b) and (e). Comply with the closed-vent system and control device provisions, leak inspection provisions, and delay of repair provisions specified in 40 CFR 60.692–5, 60.696(b), and 60.692–6 and with the monitoring, recordkeeping, and reporting provisions specified in 40 CFR 60.695, 60.697, and 60.698, except as specified in paragraphs (e)(2)(i) through (e)(2)(iii) of this section.

(i) The following exceptions apply to the provisions of § 60.692–5:

(A) When the provisions of 40 CFR 60.18 are referred to in 40 CFR 60.692–5(c), owners or operators shall comply with the provisions of Table 2 of this subpart for purposes of this subpart.

(B) When the procedures for acquiring approval to use alternative monitoring provisions are discussed in 40 CFR 60.695 (a) and (c), the provisions of § 60.784(b) shall apply for purposes of this subpart.

(C) When the provisions of 40 CFR 60.18(f)(2) are referred to in 40 CFR 60.695(a)(4), owners or operators shall

comply with the provisions of § 60.783(j) for purposes of this subpart.

(ii) The following exceptions apply to the provisions of § 60.697:

(A) When complying with the recordkeeping provisions specified in 40 CFR 60.697, the provisions of paragraphs (a), (b)(1), (b)(2), (c), (g), (h), (i), and (j) of 40 CFR 60.697 shall not apply because the provisions of these paragraphs are not related to individual drain systems or closed vent systems and control devices.

(B) When complying with § 60.697(f)(3)(iv), owners or operators shall use the procedures specified in § 60.787 for purposes of this subpart.

(iii) The following exceptions apply to the provisions of § 60.698:

(A) When complying with the reporting provisions specified in 40 CFR 60.698, the provisions of paragraphs (a) of 40 CFR 60.698 shall not apply because complying with 40 CFR 60.693 is not an alternative standard for purposes of this subpart.

(B) When complying with the reporting provisions specified in 40 CFR 60.698, the provisions of paragraphs (b) of 40 CFR 60.698 shall not apply because paragraph (b) of 40 CFR 60.698 relates to compliance demonstration information that is required to be submitted under 60.784.

(C) When complying with the reporting provisions specified in 40 CFR 60.698, the provisions of paragraphs (e) of 40 CFR 60.698 shall not apply because owners or operators are not subject to 40 CFR 60.692–7.

(3) Comply with the applicable requirements specified in 40 CFR 60.693–1(b) and (e), except as specified in paragraphs (e)(3)(i) through (e)(3)(ii) of this section. Comply with the control device, leak inspection, and delay of repair provisions specified in §§ 60.780, 60.786, and 60.777 of this subpart and with the monitoring, reporting, and recordkeeping provisions specified in §§ 60.781, 60.784, and 60.785 of this subpart.

(i) When the standards for closed-vent systems and control devices in § 60.692–5 are referred to in § 60.693–1(b), the provisions in §§ 60.780 and 60.786 shall apply for purposes of this subpart.

(ii) When the delay of repair provisions in § 60.692–6 are referred to in § 60.693–1(e), the provisions in § 60.777 shall apply for purposes of this subpart.

(f) *Requirements for RCRA 40 CFR part 264, subpart CC compliance option.* Owners or operators selecting the RCRA 40 CFR part 264, subpart CC compliance option shall comply with paragraph (f)(1) of this section and with paragraph (f)(2) or (f)(3) of this section.

(1) The owner or operator of a wastewater tank, surface impoundment, or container that is subject to both 40 CFR part 264, subpart CC and this subpart shall comply with either paragraph (f)(2) or (f)(3) of this section. The owner or operator of a wastewater tank, surface impoundment, or container that is subject to this subpart but not subject to 40 CFR part 264, subpart CC shall comply with paragraph (f)(3) of this section.

(2) Comply with the applicable requirements specified in 40 CFR 264.1084 through 264.1086, except as specified in paragraph (f)(2)(i) of this section. Comply with the closed-vent system and control device provisions in 40 CFR 264.1087, with the delay of repair provisions in 40 CFR 264.1084(k), 264.1085(f), and 264.1086(c)(4)(iii) and (d)(4)(iii), and with the inspection and monitoring, recordkeeping, and reporting provisions specified in 40 CFR 264.1088, 264.1089, and 264.1090, except as specified in paragraphs (f)(2)(ii) through (f)(2)(v) of this section.

(i) The following exceptions apply to the provisions of 40 CFR 264.1084 through 264.1086:

(A) For purposes of this subpart, 40 CFR 264.1084(a) and (j), 264.1085(a) and (e), and 264.1086(a) and (d)(2) do not apply.

(B) For purposes of this subpart, when the provisions of 40 CFR 264.1081 are referred to in 40 CFR 264.1084 through 264.1086, the provisions of § 60.771 shall apply, unless the specified term in 40 CFR 264.1084 through 264.1086 is not defined in § 60.771, in such cases the provisions of 40 CFR 264.1081 shall apply.

(C) When the term ''hazardous waste'' is used in 40 CFR 264.1084 through 264.1086, the term ''wastewater or residual'' shall apply for purposes of this subpart.

(D) When the term ''tank'' is used in 40 CFR 264.1084 through 264.1086, the term ''wastewater tank'' shall apply for purposes of this subpart.

(E) When the terms ''air pollutant emissions'' or ''organic emissions'' are used in 40 CFR 264.1084 through 264.1086, the term ''VOC emissions'' shall apply for purposes of this subpart.

(F) When the term ''maximum organic vapor pressure'' is used in 40 CFR 264.1084, the term ''maximum true vapor pressure'' shall apply for purposes of this subpart, and the maximum true vapor pressure shall be determined as specified in § 60.771 for purposes of this subpart.

(ii) The following exceptions apply to the provisions of 40 CFR 264.1087:

(A) When the provisions of 40 CFR 264.1033(e) are referred to in 40 CFR 264.1087(c)(5)(ii), the provisions of § 60.783(j) shall apply for purposes of this subpart.

(B) When the provisions of 40 CFR 264.1034(c)(1) through (c)(4) are referred to in 40 CFR 265.1087(c)(5)(iii), the provisions of § 60.783 shall apply for purposes of this subpart.

(C) When the terms ''organic'' or ''organics'' are used in 40 CFR 264.1087, the term ''VOC'' shall apply for purposes of this subpart.

(iii) The following exception applies to the provisions of 40 CFR 264.1088: When 40 CFR 264.1088(b) requires that ''the owner or operator shall incorporate this plan and schedule into the facility inspection plan required under 40 CFR 264.15,'' the written plan and schedule required by this paragraph 40 CFR 264.1088(b) shall be submitted as part of the Notification of Compliance Status required by § 60.784(c) for purposes of this subpart.

(iv) The following exceptions apply to the provisions of 40 CFR 264.1089:

(A) When complying with the recordkeeping provisions specified in 40 CFR 264.1089, the provisions of paragraphs (a), (e)(1)(iii), (f), (h), (i), and (j) of 40 CFR 264.1089 shall not apply because the provisions of these paragraphs are not related to waste management units or closed vent systems and control devices.

(B) When the term ''hazardous waste'' is used in 40 CFR 264.1089, the term ''wastewater or residual'' shall apply for purposes of this subpart.

(C) When the term ''maximum organic vapor pressure'' is used in 40 CFR 264.1089, the term ''maximum true vapor pressure'' shall apply for purposes of this subpart, and the maximum true vapor pressure shall be determined as specified in § 60.771 for purposes of this subpart.

(v) The following exceptions apply to the provisions of 40 CFR 264.1090:

(A) When complying with the reporting provisions specified in 40 CFR 264.1090, the provisions of paragraph (a) of 40 CFR 264.1090 shall not apply because the provisions of this paragraph are not related to waste management units or closed vent systems and control devices.

(B) [Reserved]

(3) Comply with the applicable requirements specified in 40 CFR 264.1084 through 264.1086, except as specified in paragraphs (f)(3)(i) through (f)(3)(xi) of this section. Comply with the control device, leak detection, and delay of repair provisions specified in §§ 60.780, 60.786, and 60.777 of this subpart and with the monitoring,

reporting, and recordkeeping provisions specified in §§ 60.781, 60.784, and 60.785 of this subpart.

(i) For purposes of this subpart, 40 CFR 264.1084(a) and (j), 264.1085(a) and (e), and 264.1086(a) and (d)(2) do not apply.

(ii) For purposes of this subpart, when the provisions of 40 CFR 264.1081 are referred to in 40 CFR 264.1084 through 264.1086, the provisions of § 60.771 shall apply, unless the specified term in 40 CFR 264.1084 through 264.1086 is not defined in § 60.771, in such cases the provisions of 40 CFR 264.1081 shall apply.

(iii) When the term ''hazardous waste'' is used in 40 CFR 264.1084 through 264.1086, the term ''wastewater or residual'' shall apply for purposes of this subpart.

(iv) When the term ''tank'' is used in 40 CFR 264.1084 through 264.1086, the term ''wastewater tank'' shall apply for purposes of this subpart.

(v) When the terms ''air pollutant emissions'' or ''organic emissions'' are used in 40 CFR 264.1084 through 264.1086, the term ''VOC emissions'' shall apply for purposes of this subpart.

(vi) When the term ''maximum organic vapor pressure'' is used in 40 CFR 264.1084, the term ''maximum true vapor pressure'' shall apply for purposes of this subpart, and the maximum true vapor pressure shall be determined as specified in § 60.771 for purposes of this subpart.

(vii) When the closed-vent systems and control devices provisions in 40 CFR 264.1087 are referred to in 40 CFR 264.1084 through 264.1086, the provisions in §§ 60.780 and 60.786 shall apply for purposes of this subpart.

(viii) For purposes of this subpart, the delay of repair provisions in 40 CFR 264.1084(k), 264.1085(f), and 264.1086(c)(4)(iii) and (d)(4)(iii) shall not apply, and the provisions in § 60.777 shall apply.

(ix) When the inspection and monitoring requirements are referred to in 40 CFR 264.1088, the provisions in § 60.781 shall apply for purposes of this subpart.

(x) When the recordkeeping provisions in 40 CFR 264.1089 are referred in 40 CFR 264.1084 through 264.1086, the provisions in § 60.785 shall apply for purposes of this subpart.

(xi) When the leak inspection provisions of 40 CFR 264.1083(d) are referred to in 40 CFR 264.1084(h)(2), 264.1085(d)(1)(ii), and 264.1086(g), the provisions in § 60.786 shall apply for purposes of this subpart.

(g) *Requirements for RCRA 40 CFR part 265, subpart CC compliance option.* Owners or operators selecting the RCRA 40 CFR part 265, subpart CC compliance option shall comply with paragraph (g)(1) of this section and with paragraph (g)(2) or (g)(3) of this section.

(1) The owner or operator of a wastewater tank, surface impoundment, or container that is subject to both 40 CFR part 265, subpart CC and this subpart shall comply with either paragraph (g)(2) or (g)(3) of this section. The owner or operator of a wastewater tank, surface impoundment, or container that is subject to this subpart but not subject to 40 CFR part 265, subpart CC shall comply with paragraph (g)(3) of this section.

(2) Comply with the applicable requirements specified in 40 CFR 265.1085 through 265.1087, except as specified in paragraph (g)(2)(i) of this section. Comply with the closed-vent system and control device provisions in 40 CFR 265.1088, with the delay of repair provisions in 40 CFR 265.1085(k), 265.1086(f), and 265.1087(d)(4)(iii), and with the inspection and monitoring and recordkeeping provisions specified in 40 CFR 265.1089 and 265.1090, except as specified in paragraphs (g)(2)(ii) through (g)(2)(iv) of this section. Comply with the reporting provisions specified in § 60.784 of this subpart.

(i) The following exceptions apply to the provisions of 40 CFR 265.1085 through 265.1087:

(A) For purposes of this subpart, 40 CFR 265.1085(a) and (j), 265.1086(a) and (e), and 265.1087(a) and (d)(2) do not apply.

(B) For purposes of this subpart, when the provisions of 40 CFR 265.1081 are referred to in 40 CFR 265.1085 through 265.1087, the provisions of § 60.771 shall apply, unless the specified term in 40 CFR 265.1085 through 265.1087 is not defined in § 60.771, in such cases the provisions of 40 CFR 265.1081 shall apply.

(C) When the term ''hazardous waste'' is used in 40 CFR 265.1085 through 265.1087, the term ''wastewater or residual'' shall apply for purposes of this subpart.

(D) When the term ''tank'' is used in 40 CFR 265.1085 through 265.1087, the term ''wastewater tank'' shall apply for purposes of this subpart.

(E) When the terms ''air pollutant emissions'' or ''organic emissions'' are used in 40 CFR 265.1085 through 265.1087, the term ''VOC emissions'' shall apply for purposes of this subpart.

(F) When the term ''maximum organic vapor pressure'' is used in 40 CFR 265.1085, the term ''maximum true vapor pressure'' shall apply for purposes of this subpart, and the maximum true vapor pressure shall be determined as specified in § 60.771 for purposes of this subpart.

(ii) The following exceptions apply to the provisions of 40 CFR 265.1088:

(A) When the provisions of 40 CFR 265.1033(e) are referred to in 40 CFR 265.1088(c)(5)(ii), the provisions of § 60.783(j) shall apply for purposes of this subpart.

(B) When the provisions of 40 CFR 265.1034(c)(1) through (c)(4) are referred to in 40 CFR 265.1088(c)(5)(iii), the provisions of § 60.783 shall apply for purposes of this subpart.

(C) When the terms ''organic'' or ''organics'' are used in 40 CFR 265.1088, the term ''VOC'' shall apply for purposes of this subpart.

(iii) The following exception applies to the provisions of 40 CFR 265.1089: When 40 CFR 265.1089(b) requires that ''the owner or operator shall incorporate this plan and schedule into the facility inspection plan required under 40 CFR 265.15,'' the written plan and schedule required by this paragraph 40 CFR 265.1089(b) shall be submitted as part of the Notification of Compliance Status required by § 60.784(c) for purposes of this subpart.

(iv) The following exceptions apply to the provisions of 40 CFR 265.1090:

(A) When complying with the recordkeeping provisions specified in 40 CFR 265.1090, the provisions of paragraphs (a), (e)(1)(iii), (f), (h), (i), and (j) of 40 CFR 265.1090 shall not apply because the provisions of these paragraphs are not related to waste management units or closed vent systems and control devices.

(B) When the term ''hazardous waste'' is used in 40 CFR 265.1090, the term ''wastewater or residual'' shall apply for purposes of this subpart.

(C) When the term ''maximum organic vapor pressure'' is used in 40 CFR 265.1090, the term ''maximum true vapor pressure'' shall apply for purposes of this subpart, and the maximum true vapor pressure shall be determined as specified in § 60.771 for purposes of this subpart.

(3) Comply with the applicable requirements specified in 40 CFR 265.1085 through 265.1087, except as specified in paragraphs (g)(3)(i) through (g)(3)(ix) of this section. Comply with the control device, leak detection, and delay of repair provisions specified in §§ 60.780, 60.786, and 60.777 of this subpart and with the monitoring, reporting, and recordkeeping provisions specified in §§ 60.781, 60.784, and 60.785 of this subpart.

(i) For purposes of this subpart, 40 CFR 265.1085(a) and (j), 265.1086(a) and (e), and 265.1087(a) and (d)(2) do not apply.

(ii) For purposes of this subpart, when the provisions of 40 CFR 265.1081 are referred to in 40 CFR 265.1085 through 265.1087, the provisions of § 60.771 shall apply, unless the specified term in 40 CFR 265.1085 through 265.1087 is not defined in § 60.771, in such cases the provisions of 40 CFR 265.1081 shall apply.

(iii) When the term ''hazardous waste'' is used in 40 CFR 265.1085 through 265.1087, the term ''wastewater or residual'' shall apply for purposes of this subpart.

(iv) When the term ''tank'' is used in 40 CFR 265.1085 through 265.1087, the term ''wastewater tank'' shall apply for purposes of this subpart.

(v) When the terms ''air pollutant emissions'' or ''organic emissions'' are used in 40 CFR 265.1085 through 265.1087, the term ''VOC emissions'' shall apply for purposes of this subpart.

(vi) When the term ''maximum organic vapor pressure'' is used in 40 CFR 265.1085, the term ''maximum true vapor pressure'' shall apply for purposes of this subpart, and the maximum true vapor pressure shall be determined as specified in § 60.771 for purposes of this subpart.

(vii) When the closed-vent systems and control devices provisions in 40 CFR 265.1088 are referred to in 40 CFR 265.1085 through 265.1087, the provisions in §§ 60.780 and 60.786 shall apply for purposes of this subpart.

(viii) For purposes of this subpart, the delay of repair provisions in 40 CFR 265.1085(k), 265.1086(f), and 265.1087 (d)(4)(iii) shall not apply, and the provisions in § 60.777 shall apply.

(ix) When the inspection and monitoring requirements are referred to in 40 CFR 265.1089, the provisions in § 60.781 shall apply for purposes of this subpart.

(x) When the recordkeeping provisions in 40 CFR 265.1090 are referred to in 40 CFR 265.1085 through 265.1087, the provisions in § 60.785 shall apply for purposes of this subpart.

(xi) When the leak inspection provisions of 40 CFR 265.1084(d) are referred to in 40 CFR 265.1085(h)(2), 265.1086(d)(1)(ii), and 265.1087(g), the provisions in § 60.786 shall apply for purposes of this subpart.

(h) *Requirements for benzene waste option.* Owners or operators selecting the Benzene Waste compliance option shall comply with paragraph (h)(1) of this section and with paragraph (h)(2) or (h)(3) of this section.

(1) The owner or operator of a waste management unit that is subject to both 40 CFR part 61, subpart FF and this subpart shall comply with either paragraph (h)(2) or (h)(3) of this section. The owner or operator of a waste management unit that is subject to this subpart but not subject to 40 CFR part 61, subpart FF shall comply with paragraph (h)(3) of this section.

(2) Comply with the applicable requirements specified in 40 CFR 61.343 through 61.347, except as specified in paragraphs (h)(2)(i) of this section. Comply with the closed-vent system and control device provisions, leak inspection provisions, and delay of repair provisions in 40 CFR 61.349, 61.355(h), and 61.350 and with the monitoring provisions, recordkeeping, and reporting provisions specified in 40 CFR 61.354, 61.356, and 61.357, except as specified in paragraphs (h)(2)(ii) through (h)(2)(v) of this section.

(i) The following exceptions apply to the provisions of 40 CFR 61.343 through 61.347:

(A) When the term ''waste stream'' is used in 40 CFR 61.343 through 61.347, the term ''wastewater or residual'' shall apply for purposes of this subpart.

(B) When the term ''maximum organic vapor pressure'' is used in 40 CFR 61.343, the term ''maximum true vapor pressure'' shall apply for purposes of this subpart.

(C) The provisions of 40 CFR 61.342(c)(1)(ii), as cited in the phrase ''in which the waste stream is placed in accordance with 40 CFR 61.342(c)(1)(ii)'' in 40 CFR 61.343 through 61.347, shall not apply for purposes of this subpart.

(ii) The following exceptions apply to the provisions of 40 CFR 61.349:

(A) When the term ''waste'' is used in 40 CFR 61.349(b), the term ''wastewater or residual'' shall apply for purposes of this subpart.

(B) When the term ''total organic compound concentration'' is used in 40 CFR 61.349, the term ''total VOC concentration'' shall apply for purposes of this subpart.

(C) When the term ''organic emissions'' is used in 40 CFR 61.349, the term ''VOC emissions'' shall apply for purposes of this subpart.

(D) When 40 CFR 61.349(a)(2)(i)(B) cites the use of Method 18, the test methods specified in § 60.783 shall apply for purposes of this subpart.

(E) When the provisions of 40 CFR 60.18 are referred to in 40 CFR 61.349(a)(2)(iii), owners or operators shall comply with the provisions of § 60.783(j) for purposes of this subpart.

(F) When cited in 40 CFR 61.349(a)(iv)(A), the phrase ''or shall recover or control the benzene emissions vented to it with an efficiency of 98 weight percent or greater'' shall not apply for purposes of this subpart.

(G) When cited in 40 CFR 61.349(a)(iv)(B), the phrase ''or 98 percent or greater for benzene'' shall not apply for purposes of this subpart.

(H) When complying with 40 CFR 61.349(c)(ii), owners or operators shall use the procedures specified in § 60.783 for purposes of this subpart.

(I) When the test methods and compliance procedures specified in 40 CFR 61.355 are referred to in 40 CFR 61.349, the provisions of § 60.783 shall apply for purposes of this subpart.

(iii) The following exceptions apply to the provisions of 40 CFR 61.354:

(A) When complying with the monitoring provisions specified in 40 CFR 61.354, the provisions of paragraphs (a) and (b) of 40 CFR 61.354 shall not apply because the provisions of these paragraphs are related to the monitoring of treatment processes, and treatment process monitoring shall be conducted following the procedures specified in § 60.781.

(B) When the provisions of 40 CFR 60.18 are referred to in 40 CFR 61.354(c)(3), owners or operators shall comply with the provisions of § 60.783(j) for purposes of this subpart.

(C) When the terms ''organic compounds,'' ''organic'', or ''benzene'' are used in 40 CFR 61.354(c) or (d), the term ''VOC'' shall apply for purposes of this subpart.

(iv) The following exceptions apply to the provisions of 40 CFR 61.356:

(A) When complying with the recordkeeping provisions specified in 40 CFR 61.356, the provisions of paragraphs (a), (b), (c), (e), (f), (i), (k), and (l) of 40 CFR 61.356 shall not apply because the provisions of these paragraphs are not related to waste management units or closed vent systems and control devices.

(B) When the term ''organics'' or the term ''benzene'' is used in 40 CFR 61.356(j)(8) or (j)(9), the term ''VOC'' shall apply for purposes of this subpart.

(C) When the term ''benzene emissions'' is used in 40 CFR 61.356(g), the term ''VOC emissions'' shall apply for purposes of this subpart.

(v) The following exceptions apply to the provisions of § 61.356:

(A) When complying with the reporting provisions specified in 40 CFR 61.357, the provisions of paragraphs (a), (b), (c), (d)(1) through (d)(5), (d)(7)(i) through (d)(7)(iii), (e), (f), and (g) of 40 CFR 61.357 shall not apply because the provisions of these paragraphs are not related to waste management units or closed vent systems and control devices.

(B) When the term ''organics'' or the term ''benzene'' is used in § 61.357(d)(7)(iv)(D), the term ''VOC'' shall apply for purposes of this subpart.

(C) When the term ''benzene emissions'' is used in § 61.357(d)(8), the term ''VOC emissions'' shall apply for purposes of this subpart.

(3) Comply with the applicable requirements specified in 40 CFR 61.343 through 61.347, except as specified in paragraphs (h)(3)(i) through (h)(3)(viii) of this section. Comply with the control device, leak detection, and delay of repair provisions specified in §§ 60.780, 60.786, and 60.777 of this subpart and with the monitoring, reporting, and recordkeeping provisions specified in §§ 60.781, 60.784, and 60.785 of this subpart.

(i) When the term ''waste stream'' is used in §§ 61.343 through 61.347, the term ''wastewater or residual'' shall apply for purposes of this subpart.

(ii) When the term ''maximum organic vapor pressure'' is used in § 61.343, the term ''maximum true vapor pressure'' shall apply for purposes of this subpart.

(iii) When the closed-vent systems and control devices provisions in § 61.349 are referred to in § 61.343 through 61.347, the provisions in §§ 60.780 and 60.786 shall apply for purposes of this subpart.

(iv) When the delay of repair provisions in § 61.350 are referred to in §§ 61.343 through 61.347, the provisions in § 60.777 shall apply for purposes of this subpart.

(v) When the leak inspection provisions specified in § 61.355(h) are referred to in §§ 61.343 through 61.347, the provisions of § 60.786 shall apply for purposes of this subpart.

(vi) The provisions of § 61.342(c)(1)(ii), as cited in the phrase ''in which the waste stream is placed in accordance with § 61.342(c)(1)(ii)'' in §§ 61.343 through 61.347, shall not apply for purposes of this subpart.

§ 60.775 Control requirements for aqueous in-process streams.

(a) The owner or operator shall comply with the provisions of Table 6 of this subpart, for each item of equipment meeting all the criteria specified in paragraphs (b) through (d) of this section and either paragraphs (e)(1) or (e)(2) of this section.

(b) The item of equipment is of a type identified in Table 6 of this subpart;

(c) The item of equipment is part of an affected facility subject to this subpart;

(d) The item of equipment is controlled less stringently than in Table 6 and is not listed in § 60.770(h) of this subpart, and the item of equipment is not otherwise exempt from controls by the provisions of this subpart or subpart A of this part; and

(e) The item of equipment:

(1) Is a drain, drain hub, manhole, lift station, trench, pipe, or oil/water separator that conveys water with an annual average concentration greater than or equal to 10,000 parts per million by weight of VOC at any flowrate; or an annual average concentration greater than or equal to 500 parts per million by weight of VOC at an annual average flow rate greater than or equal to 1 liter per minute; or

(2) Is a tank that receives one or more streams that contain water with an annual average concentration greater than or equal to 500 parts per million by weight of VOC at an annual average flowrate greater than or equal to 1 liter per minute. The owner or operator of the affected facility shall determine the characteristics of the stream as specified in paragraphs (e)(2)(i) and (ii) of this section.

(i) The characteristics of the stream being received shall be determined at the inlet to the tank.

(ii) The characteristics shall be determined according to the procedures in § 60.782(b) and (c) of this subpart.

§ 60.776 Maintenance wastewater requirements.

(a) Each owner or operator of an affected facility subject to this subpart shall comply with the requirements of paragraphs (b) through (e) of this section for maintenance wastewaters containing VOC.

(b) The owner or operator shall prepare a description of maintenance procedures for management of maintenance wastewaters generated from the emptying and purging of equipment in the process during temporary shutdowns for inspections, maintenance, and repair (i.e., a maintenance-turnaround) and during periods which are not shutdowns (i.e., routine maintenance). The descriptions shall be as follows:

(1) Specify the process equipment or maintenance tasks that are anticipated to create wastewater during maintenance activities.

(2) Specify the procedures that will be followed to properly manage the wastewater and control VOC emissions to the atmosphere; and

(3) Specify the procedures to be followed when clearing materials from process equipment.

(c) The owner or operator shall modify and update the information required by paragraph (b) of this section as needed to reflect new or revised equipment or procedures.

(d) The owner or operator shall implement the procedures described in paragraphs (b) and (c) of this section as part of the start-up, shutdown, and malfunction plan required in § 60.787 of this subpart.

(e) The owner or operator shall maintain a record of the information required by paragraphs (b) and (c) of this section as part of the start-up, shutdown, and malfunction plan required in § 60.787 of this subpart.

§ 60.777 Delay of repair.

(a) Delay of repair of equipment for which a control equipment failure or a gap, crack, tear, or hole has been identified, is allowed if the repair is technically infeasible without a shutdown, as defined in § 60.771 of this subpart, or if the owner or operator determines that VOC emissions of purged material from immediate repair would be greater than the VOC emissions likely to result from delay of repair. Repair of this equipment shall occur by the end of the next shutdown.

(b) Delay of repair of equipment for which a control equipment failure or a gap, crack, tear, or hole has been identified, is allowed if the equipment is emptied or is no longer used to treat or manage Group 1 wastewater streams or residuals removed from Group 1 wastewater streams.

(c) Delay of repair of equipment for which a control equipment failure or a gap, crack, tear, or hole has been identified is also allowed if additional time is necessary due to the unavailability of parts beyond the control of the owner or operator. Repair shall be completed as soon as practical. The owner or operator who uses this provision shall comply with the requirements of § 60.785(b)(7) of this subpart to document the reasons that the delay of repair was necessary.

§ 60.778 Stream-specific list of VOC determination.

(a) *General.* This section specifies how to determine a stream-specific list of VOC for a process wastewater stream or in-process aqueous stream. A stream-specific list of VOC is required when speciation is used for compliance demonstration (i.e., performance tests, design evaluations, and ranges of parameters set for monitoring and for determining if VOC emissions increase has occurred for modification determinations. A stream-specific list may also be used for Group 1 and Group 2 determinations.

(b) *Test methods for determining VOC concentration.* The owner or operator shall use one of the test methods that speciates compounds and is specified in § 60.782(b)(5) of this subpart to determine concentration. For process wastewater streams, the annual average concentration shall be determined either

at the point of determination or downstream of the point of determination, with adjustment for concentration changes made according to § 60.782(b)(6) of this subpart if a point downstream of the point of determination is used. For aqueous in-process streams, the annual average concentration shall be determined before the point of determination and shall be adjusted for any losses of VOC to the atmosphere and for dilution.

(c) *Compounds that may be excluded from the site-specific list of VOC.* Compounds that meet the requirements specified in paragraphs (b)(1), (b)(2), or (b)(3) of this section are not required to be included in the stream-specific list of VOC. The owner or operator shall use one of the methods specified in § 60.782(b)(5) of this subpart to determine concentration.

(1) Compounds not used or produced by the chemical process unit.

(2) Compounds with concentrations at the point of determination that are below 1 part per million by weight.

(3) Compounds with concentrations at the point of determination that are below the lower detection limit where the lower detection limit is greater than 1 part per million by weight. The method used for determining concentration shall be an analytical method for wastewater which has the compound of interest as a target analyte.

(d) *Create stream-specific list of VOC for Group 1 and Group 2 determination.* The owner or operator shall include those individual VOC with the greatest mass on the stream-specific list of VOC until 75 compounds or every compound, whichever is fewer, is included on the list, except as provided by paragraph (c) of this section. The stream-specific list of VOC must represent at least 90 percent of the total VOC in the process wastewater stream. If the compounds on the stream-specific list of VOC do not represent at least 90 percent of total VOC, Method 25D to appendix A of this part shall be used to make the Group 1 determination for that process wastewater stream. The owner or operator shall document how the percent of VOC in the process wastewater stream was determined.

(e) *Create stream-specific list of VOC for estimating VOC emission changes for modification determinations.* The owner or operator shall include those individual VOC with the greatest mass on the stream-specific list of VOC until 75 compounds or every compound, whichever is fewer, is included on the list, except as provided by paragraph (c) of this section. The stream-specific list of VOC must represent at least 90 percent of the total VOC in the process wastewater stream or aqueous in-process stream. If the compounds on the stream-specific list of VOC do not represent at least 90 percent of total VOC, the owner or operator shall use the mass flow rate procedure specified in § 60.772 of this subpart to estimate VOC emissions for modification determinations. The owner or operator shall document how the percent of VOC in the process wastewater stream or aqueous in-process stream was determined.

(f) *Create stream-specific list of VOC for compliance demonstrations.* The owner or operator shall determine the percent of total VOC in the process wastewater stream. The owner or operator shall document how the percent of VOC in the process wastewater stream was determined.

(i) For the owner or operator that can identify at least 90 percent, by mass, of the VOC in the wastewater stream or aqueous in-process stream, the individual VOC that are 5 percent, by mass, or greater, are required to be included on the list. If less than half of the total VOC in the wastewater are represented by the compounds with a mass of 5 percent or greater, the owner or operator shall include those individual VOC with the greatest mass on the stream-specific list of VOC until 75 compounds or every compound, whichever is fewer, is included on the list, except as provided by paragraph (c) of this section. The owner or operator shall document that the site-specific list of VOC is representative of the process wastewater stream and forms the basis of a good compliance demonstration.

(ii) For the owner or operator that can identify at least 50 percent, by mass, of the VOC in the wastewater stream, the individual VOC with the greatest mass on the stream-specific list of VOC up to 75 compounds or every compound, whichever is fewer, are to be included on the list, except as provided by paragraph (c) of this section. The owner or operator shall document that the site-specific list of VOC is representative of the process wastewater stream and forms the basis of a good compliance demonstration.

(iii) For the owner or operator that cannot identify at least 50 percent, by mass, of the VOC in the process wastewater stream, one of the following compliance options shall be used to treat the process wastewater stream:

(A) The design steam stripper option in § 60.779(d) of this subpart; or

(B) The 95 percent mass removal with outlet concentration of 50 ppmw option in § 60.779(e)(2) of this subpart; or

(C) The steam stripper option in § 60.779(e)(3) of this subpart.

§ 60.779 Process wastewater provisions—Performance standards for treatment processes managing Group 1 wastewater streams and/or residuals removed from Group 1 wastewater streams.

(a) This section specifies the performance standards for treating process wastewater streams that are Group 1 wastewater streams. The owner or operator shall comply with the requirements as specified in paragraphs (a)(1) through (a)(8) of this section. Where multiple compliance options are provided, the options may be used in combination for different wastewater streams and/or for different compounds in the same wastewater streams, except where otherwise provided in this section. Once a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream has been treated in accordance with this subpart, it is no longer subject to the requirements of this subpart.

(1) *Control options: Group 1 wastewater streams.* The owner or operator shall comply with the requirements specified in any one of paragraphs (d), (e), (f), (g), (h), or (m) of this section, except as provided in § 60.789 of this subpart for relationship with other rules.

(2) [Reserved]

(3) *Biological treatment processes.* Biological treatment processes in compliance with this section may be either open or closed biological treatment processes as defined in § 60.771 of this subpart. An open biological treatment process in compliance with this section need not be covered and vented to a control device as required in § 60.774 of this subpart. An open or a closed biological treatment process in compliance with this section and using §§ 60.783(f) or 60.783(g) of this subpart to demonstrate compliance is not subject to the requirements of § 60.774 of this subpart. A closed biological treatment process in compliance with this section and using § 60.783(e) of this subpart to demonstrate compliance shall comply with the requirements of § 60.774 of this subpart. Waste management units upstream of an open or closed biological treatment process shall meet the requirements of § 60.774 of this subpart, as applicable.

(4) *Performance tests and design evaluations.* If the design steam stripper option (paragraph (d) of this section) or the Resource Conservation and Recovery Act (RCRA) option (paragraph (h) of this section) is selected to comply with this section, neither a design evaluation nor a performance test is required. If § 60.789(d) of this subpart (Relationship to the HON) is selected to

comply with this section, the performance test or design evaluation used to demonstrate compliance for the HON also demonstrates compliance with this section. For any other non-biological treatment process, and for closed biological treatment processes as defined in § 60.771 of this subpart, the owner or operator shall conduct either a design evaluation as specified in paragraph (j) of this section, or a performance test as specified in § 60.783 of this subpart. For each open biological treatment process as defined in § 60.771 of this subpart, the owner or operator shall conduct a performance test as specified in § 60.783 of this subpart.

Note to paragraph (a)(4) of this section: Some open biological treatment processes may not require a performance test. Refer to § 60.783(h) of this subpart and table 36 of the appendix to subpart G of 40 CFR part 63 to determine whether the biological treatment process meets the criteria that exempt the owner or operator from conducting a performance test.)

(5) *Control device requirements.* When gases are vented from the treatment process, the owner or operator shall comply with the applicable control device requirements specified in §§ 60.780 and 60.783(i) and (j) of this subpart, and the applicable leak inspection provisions specified in § 60.786 of this subpart. This requirement does not apply to any open biological treatment process that meets the mass removal requirements. Vents from anaerobic biological treatment processes may be routed through hard-piping to a fuel gas system.

(6) *Residuals: general.* When residuals result from treating Group 1 wastewater streams, the owner or operator shall comply with the requirements for residuals specified in paragraph (k) of this section.

(7) *Treatment using a series of treatment processes.* In all cases where the wastewater provisions in this subpart allow or require the use of a treatment process or control device to comply with emissions limitations, the owner or operator may use multiple treatment processes or control devices, respectively. For combinations of treatment processes where the wastewater stream is conveyed by hard-piping, the owner or operator shall comply with either the requirements of paragraph (a)(7)(i) or (a)(7)(ii) of this section. For combinations of treatment processes where the wastewater stream is not conveyed by hard-piping, the owner or operator shall comply with the requirements of paragraph (a)(7)(ii) of this section. For combinations of control devices, the owner or operator shall comply with the requirements of paragraph (a)(7)(i) of this section.

(i)(A) For combinations of treatment processes, the wastewater stream shall be conveyed by hard-piping between the treatment processes. For combinations of control devices, the vented gas stream shall be conveyed by hard-piping between the control devices.

(B) For combinations of treatment processes, each treatment process shall meet the applicable requirements of § 60.774 of this subpart except as provided in paragraph (a)(3) of this section.

(C) The owner or operator shall identify, and keep a record of, the combination of treatment processes or of control devices, including identification of the first and last treatment process or control device.

(D) The performance test or design evaluation shall determine compliance across the combination of treatment processes or control devices. If a performance test is conducted, the ''inlet'' shall be the point at which the wastewater stream or residual enters the first treatment process, or the vented gas stream enters the first control device. The ''outlet'' shall be the point at which the treated wastewater stream exits the last treatment process, or the vented gas stream exits the last control device.

(ii)(A) For combinations of treatment processes, each treatment process shall meet the applicable requirements of § 60.774 of this subpart except as provided in paragraph (a)(3) of this section.

(B) The owner or operator shall identify, and keep a record of, the combination of treatment processes, including identification of the first and last treatment process.

(C) The owner or operator shall determine the mass removed or destroyed by each treatment process. The performance test or design evaluation shall determine compliance for the combination of treatment processes by adding together the mass removed or destroyed by each treatment process.

(8) *Prohibition against double counting.* The removal of VOC must be in addition to the reduction and destruction required by other rules, unless the removal of VOC is from the same stream.

(b) [Reserved]

(c) [Reserved]

(d) *Design steam stripper option.* The owner or operator shall operate and maintain a steam stripper that meets the requirements of paragraphs (d)(1) through (d)(6) of this section.

(1) Minimum active column height of 5 meters;

(2) Countercurrent flow configuration with a minimum of 10 actual trays;

(3) Minimum steam flow rate of 0.04 kilograms of steam per liter of wastewater feed within the column;

(4) Minimum wastewater feed temperature to the steam stripper of 95° C, or minimum column operating temperature of 95° C;

(5) Maximum liquid loading of 67,100 liters per hour per square meter; and

(6) Operate at nominal atmospheric pressure.

(e) *Percent mass removal/destruction option, for nonbiological treatment process.* For wastewater streams that are Group 1 and treated in a nonbiological treatment process, the owner or operator shall comply with either paragraph (e)(1) or (e)(2) of this section for a noncombustion treatment process and paragraph (e)(1) of this section for a combustion treatment process. For wastewater streams that are Group 1 and treated in a steam stripper, the owner or operator shall comply with either paragraph (e)(1), (e)(2), or (e)(3) of this section. This paragraph (e) shall not be used for biological treatment processes.

(1) *Reduce mass flow rate of VOC by the appropriate Fr values.* For wastewater streams that are Group 1, the owner or operator shall reduce, by removal or destruction, the mass flow rate of VOC by the required removal or destruction efficiency, i.e., the flow-weighted average Fr value. To use this compliance option, the owner or operator shall develop a stream-specific list of VOC upon which to base the compliance demonstration and shall calculate a flow-weighted average Fr. Follow the procedures in § 60.778 of this subpart to develop a stream-specific list of VOC. Follow the procedures in appendix J of this part to determine Fr values for individual compounds. The owner or operator shall conduct either a design evaluation or a performance test. Design evaluation requirements are specified in paragraph (j) of this section. Performance test requirements are specified in § 60.783(c) of this subpart, for noncombustion treatment processes, and in § 60.783(d) of this subpart, for combustion treatment processes.

(2) *Reduce mass flow rate of VOC by 95 percent and reduce outlet concentration of VOC to less than 50 ppmw, for noncombustion treatment process.* For wastewater streams that are Group 1, the owner or operator shall reduce, by removal or destruction, the mass flow rate of VOC by 95 percent and reduce the outlet concentration of VOC to less than 50 ppmw. The owner or operator shall conduct either a design evaluation or a performance test. Design evaluation requirements are specified in

paragraph (j) of this section. Performance test requirements are specified in § 60.783(c) of this subpart.

(3) *Demonstrate a steam stripper reduces mass flow rate of methanol, ethylene glycol monobutyl ether acetate, and methyl ethyl ketone by the appropriate Fr value.* For wastewater steams that are Group 1 and treated in a steam stripper, the owner or operator shall demonstrate that the mass flow rate of methanol is reduced by 31 percent; that the mass flow rate of ethylene glycol monobutyl ether acetate is reduced by 76 percent; and that the mass flow rate of methyl ethyl ketone is reduced by 95 percent. The owner or operator shall conduct either a design evaluation or a performance test. Design evaluation requirements are specified in paragraph (j) of this section. Performance test requirements are specified in § 60.783(c) of this subpart. When design evaluations are used to demonstrate compliance, the Henry's law constant at 25° C (expressed as y/x atmosphere per mole fraction) used in the evaluation shall be: 7.73 for methanol; 24.96 for ethylene glycol monobutyl ether acetate; and 59.2 for methyl ethyl ketone.

(f) *Required mass removal (RMR) option, for noncombustion treatment process.* For wastewater streams that are Group 1, the owner or operator shall reduce, by removal or destruction, the mass flow rate of VOC by the required mass removal, i.e, the flow-weighted average Fr. To use this compliance option, the owner or operator shall develop a list of VOC upon which to base the compliance demonstration and shall calculate a flow-weighted average Fr. Follow the procedures in § 60.778 of this subpart to develop a stream-specific list of VOC. Follow the procedures in appendix J of this part to determine Fr values. The owner or operator shall conduct a compliance demonstration as specified in paragraphs (f)(1), (f)(2), and (f)(3) of this section.

(1) *Nonbiological, noncombustion treatment process.* The owner or operator shall conduct either a design evaluation or a performance test. Design evaluation requirements are specified in paragraph (j) of this section. Performance test requirements are specified in § 60.783(e) of this subpart.

(2) *Aerobic biological treatment process—open and closed biological treatment processes.* Closed biological treatment process means a tank or surface impoundment where biological treatment occurs and air VOC emissions from the treatment process are routed to either a control device by means of a closed vent system or to a fuel gas system by means of hard-piping. The tank or surface impoundment has a fixed roof, as defined in § 60.771 of this subpart, or a floating flexible membrane cover that meets the requirements specified in 40 CFR § 63.134. Open biological treatment process is not a closed biological treatment process. Open biological treatment processes have additional requirements for compliance demonstration because they have more potential for VOC emissions.

(i) *Closed biological treatment process.* The owner or operator shall conduct either a design evaluation or a performance test. Design evaluation requirements are specified in paragraph (j) of this section. Performance test requirements are specified in both § 60.783(e) or (f) of this subpart.

(ii) *Open biological treatment process.* The owner or operator shall conduct a performance test as specified in § 60.783(f) of this subpart, except as provided in § 60.783(h) of this subpart.

(3) *Anaerobic biological treatment process.* An anaerobic biological treatment process shall also be a closed biological treatment process. The owner or operator shall conduct either a design evaluation or a performance test. Design evaluation requirements are specified in paragraph (j) of this section. Performance test requirements are specified in § 60.783(e) of this subpart.

(g) *95-percent RMR option, for biological treatment processes.* The owner or operator shall reduce, by removal or destruction, the mass flow rate of VOC by 95 percent for all wastewater entering the biological treatment process. To use this compliance option, the owner or operator shall develop a stream-specific list of VOC as specified in § 60.778 of this subpart upon which to base the compliance demonstration. The owner or operator shall conduct a compliance demonstration as specified in paragraphs (g)(1) and (g)(2) of this section. The owner or operator shall also comply with paragraphs (g)(3) and (g)(4) of this section.

(1) *Aerobic biological treatment process—open and closed biological treatment processes.*

(i) *Closed biological treatment process.* The owner or operator shall conduct either a design evaluation or a performance test. Design evaluation requirements are specified in paragraph (j) of this section. Performance test requirements are specified in both § 60.783(e) and (g) of this subpart.

(ii) *Open biological treatment process.* The owner or operator shall conduct a performance test as specified in § 60.783(g) of this subpart, except as provided in § 60.783(h) of this subpart.

(2) *Anaerobic biological treatment process.* An anaerobic biological treatment process shall also be a closed biological treatment process. The owner or operator shall conduct either a design evaluation or a performance test. Design evaluation requirements are specified in paragraph (j) of this section. Performance test requirements are specified in § 60.783(e) of this subpart.

(3) For each treatment process or waste management unit that receives, manages, or treats wastewater streams subject to this paragraph (g)(3), from the point of determination of each Group 1 or Group 2 wastewater stream to the biological treatment unit, the owner or operator shall comply with § 60.774 of this subpart for control of air VOC emissions.

(4) If a wastewater stream is in compliance with the requirements in paragraph (d), (e), (f), (h), or (m) of this section before entering the biological treatment unit, the VOC mass of that wastewater is not required to be included in the total mass flow rate entering the biological treatment unit for the purpose of demonstrating compliance.

(h) *Treatment in a RCRA unit option.* The owner or operator shall treat the wastewater stream or residual in a unit identified in, and complying with, paragraphs (h)(1), (h)(2), or (h)(3) of this section. These units are exempt from the design evaluation or performance tests requirements specified in paragraphs (a)(4) and (j) of this section, and from the monitoring requirements specified in § 60.781 of this subpart, as well as recordkeeping and reporting requirements associated with monitoring and performance tests.

(1) The wastewater stream or residual is discharged to a hazardous waste incinerator for which the owner or operator has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 264, subpart O, or has certified compliance with the interim status requirements of 40 CFR part 265, subpart O;

(2) The wastewater stream or residual is discharged to a process heater or boiler burning hazardous waste for which the owner or operator:

(i) Has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H; or

(ii) Has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

(3) The wastewater stream or residual is discharged to an underground injection well for which the owner or operator has been issued a final permit

under 40 CFR part 270 or 40 CFR part 144 and complies with the requirements of 40 CFR part 122. The owner or operator shall comply with all applicable requirements of this subpart prior to the point where the wastewater enters the underground portion of the injection well.

(i) [Reserved]

(j) *Design evaluations or performance tests for treatment processes.* Except as provided in paragraph (j)(3), (h), or (m) of this section, the owner or operator shall demonstrate by the procedures in either paragraph (j)(1) or (j)(2) of this section that each nonbiological treatment process used to comply with paragraphs (e), and/or (f) of this section achieves the conditions specified for compliance. The owner or operator shall demonstrate by the procedures in either paragraph (j)(1) or (j)(2) of this section that each closed biological treatment process used to comply with paragraphs (f) or (g) of this section achieves the conditions specified for compliance. If an open biological treatment unit is used to comply with paragraph (f) or (g) of this section, the owner or operator shall comply with § 60.783(f) or § 60.783(g), respectively, of this subpart. Some open biological treatment processes may not require a performance test. Refer to § 60.783(h) of this subpart to determine whether the open biological treatment process meets the criteria that exempt the owner or operator from conducting a performance test.

(1) This paragraph (j)(1) may be used to demonstrate compliance with paragraphs (e), (f), or (g) of this section, except when the treatment process is an open biological treatment process. A design evaluation and supporting documentation that addresses the operating characteristics of the treatment process and that is based on operation at a representative wastewater stream flow rate and a representative concentration under which it would be most difficult to demonstrate compliance. For closed biological treatment processes, the actual mass removal shall be determined by a mass balance over the unit. The mass flow rate of VOC exiting the treatment process shall be the sum of the mass flow rate of VOC in the wastewater stream exiting the biological treatment process and the mass flow rate of the vented gas stream exiting the control device. The mass flow rate entering the treatment process minus the mass flow rate exiting the process determines the actual mass removal.

(2) This paragraph (j)(2) may be used to demonstrate compliance with paragraphs (e), (f), or (g) of this section. Performance tests conducted using test methods and procedures that meet the applicable requirements specified in § 60.783 of this subpart.

(3) The provisions of paragraphs (j)(1) and (j)(2) of this section do not apply to design stream strippers which meet the requirements of paragraph (d) of this section.

(k) *Residuals.* For each residual removed from a Group 1 wastewater stream, the owner or operator shall control for air VOC emissions by complying with § 60.774 of this subpart and by complying with one of the provisions in paragraphs (k)(1) through (k)(4) of this section.

(1) Recycle the residual to a production process or sell the residual for the purpose of recycling. Once a residual is returned to a production process, the residual is no longer subject to this section.

(2) Return the residual to the treatment process.

(3) Treat the residual to destroy the total combined mass flow rate of VOC by 99 percent or more, as determined by the procedures specified in § 60.783(c) or (d) of this subpart.

(4) Comply with the requirements for RCRA treatment options specified in paragraph (h) of this section.

(l) [Reserved]

(m) *1 Mg exemption.* For each plant site, up to 1 Mg of VOC per year may be excluded from control. The 1 Mg shall be based on an annual average and calculated according to procedures in paragraphs (m)(1) and (m)(2) of this section.

(1) *Annual average concentration.* The annual average concentration shall be a flow-weighted average representative of actual or anticipated operation of the CPU generating the process wastewater over a designated 12-month period. For flexible operation units, the owner or operator shall consider the anticipated production over the designated 12-month period and include all process wastewater streams generated by the process equipment during this period. The owner or operator is not required to determine the concentration of VOC that are not reasonably expected to be in the process. Concentration values that are not determined using Method 25D may be adjusted with the chemical's Fm value. Compound-specific Fm factors shall be determined as specified in appendix J of this part. Flow-weighted annual average concentrations for VOC means the total mass of VOC occurring in the wastewater stream during the designated 12-month period divided by the total mass of the wastewater stream during the same designated 12-month period. The annual average concentration shall be determined for each process wastewater stream either at the point of determination, or downstream of the point of determination with adjustment for concentration changes made according to § 60.782 of this subpart. The procedures specified in § 60.782(b)(5)(i) through (b)(5)(iv) and (b)(6) of this subpart are considered acceptable for determining the annual average concentration. They may be used in combination, and no one procedure shall take precedence over another. A minimum of three wastewater samples from each process wastewater stream shall be taken. Samples may be grab samples or composite samples.

(2) *Annual average flow rate.* The owner or operator shall determine the annual average flow rate by measuring flow rate either at the point of determination for each process wastewater stream, or downstream of the point of determination with adjustment for flow rate changes made according to § 60.782(c)(4) of this subpart. The annual average flow rate for the process wastewater stream shall be representative of the actual or anticipated operation of the CPU generating the wastewater over the designated 12-month period.

§ 60.780 Standards—Control devices.

(a) For each control device used to comply with the provisions in §§ 60.774, 60.775, and 60.779 of this subpart, the owner or operator shall operate and maintain the control device or combination of control devices in accordance with the requirements of paragraphs (b) through (g) of this section, unless otherwise specified in this subpart.

(b) Whenever organic VOC emissions are vented to a control device used to comply with the provisions of this subpart, such control device shall be operating.

(c) The control device shall be designed and operated in accordance with paragraph (c)(1), (c)(2), (c)(3), (c)(4), or (c)(5) of this section.

(1) An enclosed combustion device (including but not limited to a vapor incinerator, boiler, or process heater) shall meet the conditions in paragraph (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this section, alone or in combination with other control devices. If a boiler or process heater is used as the control device, then the vent stream shall be introduced into the flame zone of the boiler or process heater.

(i) Reduce the total organic compound emissions, less methane and ethane, or total VOC emissions vented to the

control device by 95 percent by weight or greater;

(ii) Achieve an outlet total organic compound concentration, less methane and ethane, or total VOC concentration of 20 parts per million by volume on a dry basis corrected to 3 percent oxygen. The owner or operator shall use either Method 18, 40 CFR part 60, appendix A, or any other method or data that has been validated according to the applicable procedures in Method 301, 40 CFR part 63, appendix A; or

(iii) Provide a minimum residence time of 0.5 seconds at a minimum temperature of 760° C.

(2) A vapor recovery system (including but not limited to a carbon adsorption system or condenser), alone or in combination with other control devices, shall reduce the total organic compound emissions, less methane and ethane, or total VOC emissions vented to the control device by 95 percent by weight, or greater, or achieve an outlet total organic compound concentration, less methane and ethane, or total VOC concentration of 20 parts per million by volume, whichever is less stringent. The 20 parts per million by volume performance standard is not applicable to compliance with the provisions of § 60.774 of this subpart for surface impoundments or containers.

(3) A flare shall comply with the requirements of 40 CFR 63.11, as specified in table 2A of this subpart, and § 60.783(j) of this subpart.

(4) A scrubber, alone or in combination with other control devices, shall reduce the total organic compound emissions, less methane and ethane, or total VOC emissions in such a manner that 95 weight percent is either removed, or destroyed by chemical reaction with the scrubbing liquid or achieve an outlet total organic compound concentration, less methane and ethane, or total VOC concentration of 20 parts per million by volume, whichever is less stringent. The 20 parts per million by volume performance standard is not applicable to compliance with the provisions of § 60.774 of this subpart for surface impoundments or containers.

(5) Any other control device used shall reduce the total organic compound emissions, less methane and ethane, or total VOC emissions vented to the control device by 95 percent by weight or greater.

(d) Except as provided in paragraph (d)(4) of this section, an owner or operator shall demonstrate that each control device or combination of control devices achieves the appropriate conditions specified in paragraph (c) of this section by using one or more of the methods specified in paragraphs (d)(1), (d)(2), or (d)(3) of this section.

(1) Performance tests conducted using the test methods and procedures specified in § 60.783(i) of this subpart for control devices other than flares; or

(2) A design analysis that addresses the vent stream characteristics and control device operating parameters specified in paragraphs (d)(2)(i) through (d)(2)(vii) of this section.

(i) For a thermal vapor incinerator, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate and shall establish the design minimum and average temperature in the combustion zone and the combustion zone residence time.

(ii) For a catalytic vapor incinerator, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate and shall establish the design minimum and average temperatures across the catalyst bed inlet and outlet.

(iii) For a boiler or process heater, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate; shall establish the design minimum and average flame zone temperatures and combustion zone residence time; and shall describe the method and location where the vent stream is introduced into the flame zone.

(iv) For a condenser, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature and shall establish the design outlet organic compound concentration level, design average temperature of the condenser exhaust vent stream, and the design average temperatures of the coolant fluid at the condenser inlet and outlet.

(v) For a carbon adsorption system that regenerates the carbon bed directly on-site in the control device such as a fixed-bed absorber, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature and shall establish the design exhaust vent stream organic compound concentration level, adsorption cycle time, number and capacity of carbon beds, type and working capacity of activated carbon used for carbon beds, design total regeneration stream mass or volumetric flow over the period of each complete carbon bed regeneration cycle, design carbon bed temperature after regeneration, design carbon bed regeneration time, and design service life of carbon.

(vi) For a carbon adsorption system that does not regenerate the carbon bed directly on-site in the control device such as a carbon canister, the design analysis shall consider the vent stream composition, constituent concentrations, mass or volumetric flow rate, relative humidity, and temperature and shall establish the design exhaust vent stream organic compound concentration level, capacity of carbon bed, type and working capacity of activated carbon used for carbon bed, and design carbon replacement interval based on the total carbon working capacity of the control device and affected facility operating schedule.

(vii) For a scrubber, the design analysis shall consider the vent stream composition; constituent concentrations; liquid-to-vapor ratio; scrubbing liquid flow rate and concentrations; temperature; and the reaction kinetics of the constituents with the scrubbing liquid. The design analysis shall establish the design exhaust vent stream organic compound concentration level and will include the additional information in paragraphs (d)(2)(vii)(A) and (d)(2)(vii)(B) of this section for trays and a packed column scrubber.

(A) Type and total number of theoretical and actual trays;

(B) Type and total surface area of packing for entire column, and for individual packed sections if column contains more than one packed section.

(3) For flares, the compliance determination is specified in § 60.783(j) of this subpart.

(4) An owner or operator using any control device specified in paragraphs (d)(4)(i) through (d)(4)(iv) of this section is exempt from the requirements in paragraphs (d)(1) through (d)(3) of this section.

(i) A boiler or process heater with a design heat input capacity of 44 megawatts or greater.

(ii) A boiler or process heater into which the emission stream is introduced with the primary fuel.

(iii) A boiler or process heater burning hazardous waste for which the owner or operator:

(A) Has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266 subpart H, or

(B) Has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

(iv) A hazardous waste incinerator for which the owner or operator has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 264, subpart O, or has certified compliance with the interim

status requirements of 40 CFR part 265, subpart O.

(e) The owner or operator of a control device that is used to comply with the provisions of this section shall monitor the control device in accordance with § 60.781 of this subpart.

(f) Each control device shall be visually inspected initially and annually thereafter, and at other times as requested by the Administrator. Except as provided in § 60.777 of this subpart, if gaps, cracks, tears, or holes are observed in ductwork, piping, or connections to covers and control devices during an inspection, a first effort to repair shall be made as soon as practical but no later than 5 calendar days after identification. Repair shall be completed no later than 15 calendar days after identification or discovery of the defect.

(g) The owner or operator using a carbon adsorption system shall operate and maintain the control device in accordance with the following requirements:

(1) Following the initial startup of the control device, all carbon in the control device shall be replaced with fresh carbon on a regular, pre-determined time interval that is no longer than the carbon service life established for the carbon adsorption system.

(2) All carbon removed from the control device shall be managed in accordance with one of the following:

(i) Regenerated or reactivated in a thermal treatment unit that is permitted under subpart X of this part or 40 CFR part 265, subpart P of this chapter;

(ii) Incinerated by a process that is permitted under subpart 0 of this part; or

(iii) Burned in a boiler or industrial furnace that is permitted under 40 CFR part 266, subpart H of this chapter.

§ 60.781 Monitoring of operations.

(a) For each design steam stripper or biological treatment unit used to comply with § 60.779 of this subpart, the owner or operator shall comply with the monitoring requirements specified in Table 7 of this subpart.

(b) If the owner or operator elects to comply using biological treatment processes, the owner or operator shall request approval to monitor appropriate parameters that demonstrate proper operation of the biological treatment unit. The request shall be submitted according to the procedures specified in § 60.784(b) of this subpart and shall include a description of planned reporting and recordkeeping procedures. The owner or operator shall include as part of the submittal the basis for the selected monitoring frequencies and the methods that will be used. The Administrator will specify appropriate reporting and recordkeeping requirements as part of the review of the permit application or by other appropriate means. Table 7 of this subpart summarizes the provisions specified in this paragraph (b).

(c) If the owner or operator elects to comply with Item 3 in Table 7 of this subpart, the owner or operator shall request approval to monitor appropriate parameters that demonstrate proper operation of the selected treatment process. The request shall be submitted according to the procedures specified in § 60.784(b) of this subpart, and shall include a description of planned reporting and recordkeeping procedures. The Administrator will specify appropriate reporting and recordkeeping requirements as part of the review of the permit application or by other appropriate means.

(d) Except as provided in paragraphs (d)(4) and (d)(5) of this section, for each control device used to comply with the requirements of §§ 60.774, 60.775, 60.779, and 60.780 of this subpart, the owner or operator shall comply with the requirements in § 60.780(d) of this subpart, and with the requirements specified in paragraph (d)(1), (d)(2), or (d)(3) of this section, unless otherwise specified in this subpart.

(1) The owner or operator shall comply with the monitoring requirements specified in Table 8 of this subpart; or

(2) The owner or operator shall use an organic monitoring device installed at the outlet of the control device and equipped with a continuous recorder. Continuous recorder is defined in § 60.771 of this subpart; or

(3) The owner or operator shall request approval to monitor parameters other than those specified in paragraphs (d)(1) and (d)(2) of this section. The request shall be submitted according to the procedures specified in § 60.784(b) of this subpart, and shall include a description of planned reporting and recordkeeping procedures. The Administrator will specify appropriate reporting and recordkeeping requirements as part of the review of the permit application or other appropriate means.

(4) For a boiler or process heater in which all vent streams are introduced with primary fuel, the owner or operator shall comply with the requirements in § 60.780(d) of this subpart but the owner or operator is exempt from the monitoring requirements specified in paragraphs (d)(1) through (d)(3) of this section.

(5) For a boiler or process heater with a design heat input capacity of 44 megawatts or greater, the owner or operator shall comply with the requirements in § 60.780(d) of this subpart but the owner or operator is exempt from the monitoring requirements specified in paragraphs (d)(1) through (d)(3) of this section.

(e) For each parameter monitored in accordance with paragraph (b), (c), or (d) of this section, the owner or operator shall establish a value that indicates proper operation of the treatment process or control device. In order to establish the value, the owner or operator shall comply with the requirements specified in §§ 60.784(c)(6)(ii)(A) and 60.784(c)(7)(ii) of this subpart.

(f) Monitoring equipment shall be installed, calibrated, and maintained according to the manufacturer's specifications or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately.

(g) Each owner or operator of a treatment process or control device subject to the monitoring provisions of this subpart shall operate the treatment process or control device such that monitored parameters are below the maximum or above the minimum established value required to be monitored under paragraphs (b), (c), or (d) of this section and established under paragraph (e) of this section.

(h) Monitoring data under this subpart is directly enforceable when determining compliance with the required operating limits for the monitored control devices. For each excursion, except for excused excursions as defined in § 60.784(d)(3), the owner or operator shall be deemed to have failed to have applied the control in a manner that achieves the required operating limits. Failure to achieve the required operating limits is a violation of this standard.

§ 60.782 Process wastewater provisions—test methods and procedures for determining applicability and Group 1 and Group 2 determinations (determining which process wastewater streams require control).

(a) *Procedures to determine applicability.* An owner or operator shall comply with paragraph (a)(1) or (a)(2) of this section for each wastewater stream to determine which wastewater streams require control for VOC. The owner or operator may use a combination of the approaches in paragraphs (a)(1) and (a)(2) of this

section for different wastewater streams generated at the affected facility.

(1) *Determine Group 1 or Group 2 status.* Determine whether a wastewater stream is a Group 1 or Group 2 wastewater stream in accordance with paragraphs (b) and (c) of this section.

(2) *Designate as Group 1.* An owner or operator may designate as a Group 1 wastewater stream a single wastewater stream or a mixture of wastewater streams. The owner or operator is not required to determine the concentration or flow rate for each designated Group 1 wastewater stream for the purposes of this section.

(b) *Procedures to establish concentrations, when determining Group status under paragraph (a)(1) of this section.* An owner or operator who elects to comply with the requirements of paragraph (a)(1) of this section shall determine the annual average concentration for VOC according to paragraph (b)(1) of this section. The annual average concentration shall be a flow-weighted average representative of actual or anticipated operation of the designated CPU generating the wastewater over a designated 12-month period. For flexible operation units, the owner or operator shall consider the anticipated production over the designated 12-month period and include all wastewater streams generated by the process equipment during this period. The owner or operator is not required to determine the concentration of VOC that are not reasonably expected to be in the process or in the resulting wastewater stream.

(1) *General.* An owner or operator who elects to comply with the requirements of paragraph (a)(1) of this section shall determine the flow-weighted annual average concentration for VOC and the range of concentrations represented by the flow-weighted annual average concentration. For the purposes of this section, the term concentration, whether concentration is used alone or with other terms, may be adjusted by the compound-specific fraction measured (Fm) factors. Compound-specific Fm factors shall be determined as specified in appendix J of this part. Flow-weighted annual average concentration for VOC means the total mass of VOC occurring in the wastewater stream during the designated 12-month period divided by the total mass of the wastewater stream during the same designated 12-month period. The annual average concentration shall be determined for each wastewater stream either at the point of determination, or downstream of the point of determination with adjustment for concentration changes made according to paragraph (b)(6) of this section. The procedures specified in paragraphs (b)(3), (b)(4), and (b)(5) of this section are considered acceptable procedures for determining the annual average concentration. They may be used in combination, and no one procedure shall take precedence over another.

(2) [Reserved]

(3) *Process knowledge of the wastewater.* Where process knowledge is used to determine the annual average concentration, the owner or operator shall provide sufficient information to document the annual average concentration for wastewater streams determined to be Group 2 wastewater streams as specified in § 60.785(g) of this subpart. Documentation to determine the annual average concentration is not required for Group 1 streams. Examples of acceptable documentation include material balances, records of chemical purchases, process stoichiometry, or previous test results. If test data are used, the owner or operator shall provide documentation describing the testing protocol and the means by which any losses of volatile compounds during sampling, and the bias and accuracy of the analytical method, were accounted for in the determination.

(4) *Bench-scale or pilot-scale test data.* Where bench-scale or pilot-scale test data are used to determine the annual average concentration, the owner or operator shall provide sufficient information to document that the data are representative of the actual annual average concentration, or are reliably indicative of another relevant characteristic of the wastewater stream that could be used to predict the annual average concentration. For concentration data, the owner or operator shall also provide documentation describing the testing protocol, and the means by which any losses of volatile compounds during sampling, and the bias and accuracy of the analytical method, were accounted for in the determination of annual average concentration.

(5) *Test data from sampling at the point of determination or at a location downstream of the point of determination.* Where an owner or operator elects to comply with paragraph (a)(1) of this section by measuring the concentration for VOC, the owner or operator shall comply with the requirements of this paragraph (b)(5). For each wastewater stream, measurements shall be made either at the point of determination, or downstream of the point of determination with adjustment for concentration changes made according to paragraph (b)(6) of this section. A minimum of three samples from each wastewater stream shall be taken. Samples may be grab samples or composite samples.

(i) *Methods.* The owner or operator shall use any of the methods specified in paragraphs (b)(5)(i)(A) through (b)(5)(i)(F) of this section.

(A) *Method 25D.* Use procedures specified in Method 25D, 40 CFR part 60, appendix A.

(B) *Method 305.* Use procedures specified in Method 305, 40 CFR part 63, appendix A .

(C) *Methods 624 and 625.* Use procedures specified in Methods 624 and 625, 40 CFR part 136, appendix A and comply with the sampling protocol requirements specified in paragraph (b)(5)(ii) of this section. If these methods are used to analyze one or more compounds that are not on the method's published list of approved compounds, the Alternative Test Procedure specified in 40 CFR part 136.4 and 136.5 shall be followed. For Method 625, make corrections to the compounds for which the analysis is being conducted. The corrections shall be based on the accuracy as recovery factors in Table 7 of the method.

(D) *Method 1624 and Method 1625.* Use procedures specified in Method 1624 and Method 1625, 40 CFR part 136, appendix A and comply with the requirements specified in paragraph (b)(5)(ii) of this section. If these methods are used to analyze one or more compounds that are not on the method's published list of approved compounds, the Alternative Test Procedure specified in 40 CFR part 136.4 and 136.5 shall be followed.

(E) *Other EPA method(s).* Use procedures specified in the method and comply with the requirements specified in paragraphs (b)(5)(ii) and either paragraph (b)(5)(iii)(A) or (b)(5)(iii)(B) of this section.

(F) *Method(s) other than EPA method.* Use procedures specified in the method and comply with the requirements specified in paragraphs (b)(5)(ii) and (b)(5)(iii)(A) of this section.

(ii) *Sampling plan.* The owner or operator who is expressly referred to this paragraph (b)(5)(ii) by provisions of this subpart shall prepare a sampling plan. Wastewater samples shall be collected using sampling procedures which minimize loss of organic compounds during sample collection and analysis and maintain sample integrity. The sample plan shall include procedures for determining recovery efficiency of the relevant VOC. An example of an acceptable sampling plan

would be one that incorporates similar sampling and sample handling requirements to those of Method 25D, 40 CFR part 60, appendix A. The sampling plan shall be maintained at the facility.

(iii) *Validation of methods.* The owner or operator shall validate EPA methods other than Methods 25D, 305, 624, 625, 1624, and 1625 using the procedures specified in paragraph (b)(5)(iii)(A) or (b)(5)(iii)(B) of this section. The owner or operator shall validate other methods as specified in paragraph (b)(5)(iii)(A) of this section.

(A) *Validation of EPA methods and other methods.* The method used to measure VOC concentrations in the wastewater shall be validated according to section 5.1 or 5.3, and the corresponding calculations in section 6.1 or 6.3, of Method 301 of appendix A of this part. The data are acceptable if they meet the criteria specified in section 6.1.5 or 6.3.3 of Method 301 of appendix A of this part. If correction is required under section 6.3.3 of Method 301 of appendix A of this part, the data are acceptable if the correction factor is within the range 0.7 to 1.30. Other sections of Method 301 of appendix A of this part are not required. The concentrations of the individual VOC measured in the water may be corrected to their concentrations had they been measured by Method 25D of appendix A of this part, by multiplying each concentration by the compound-specific fraction measured (Fm) factor. Compound-specific Fm factors shall be determined as specified in appendix J of this part.

(B) *Validation for EPA methods.* Follow the procedures as specified in ''Alternative Validation Procedure for EPA Waste Methods'' 40 CFR part 63, appendix D.

(iv) *Calculations of average concentration.* For methods that speciate, the average concentration of VOC shall be calculated by first summing the concentration of the individual compounds to obtain a total VOC concentration for the sample, adding the sample totals, and then dividing by the number of samples in the run to obtain the sample average for the run. If the method used does not speciate the compounds, the sample results should be added and this total divided by the number of samples in the run to obtain the sample average for the run.

(6) *Adjustment for concentrations determined downstream of the point of determination.* The owner or operator shall make corrections to the annual average concentration when the concentration is determined downstream of the point of determination at a location where: two or more wastewater streams have been mixed; one or more wastewater streams have been treated; or, losses to the atmosphere have occurred. The owner or operator shall make the adjustments either to the individual data points or to the final annual average concentration.

(c) *Procedures to determine flow rate, when evaluating Group status under paragraph (a)(1) of this section.* An owner or operator who elects to comply with paragraph (a)(1) of this section shall determine the annual average flow rate of the wastewater stream and the range of flow rates represented by the annual average flow rate. The annual average flow rate shall be determined either at the point of determination for each wastewater stream, or downstream of the point of determination with adjustment for flow rate changes made according to paragraph (c)(4) of this section. These procedures may be used in combination for different wastewater streams at the affected facility. The annual average flow rate for the wastewater stream shall be representative of actual or anticipated operation of the designated CPU generating the wastewater over a designated 12-month period. The owner or operator shall consider the annual wastewater volume generated by the designated CPU. If the designated CPU is a flexible operation unit, the owner or operator shall consider all anticipated production in the process equipment over the designated 12-month period. The procedures specified in paragraphs (c)(1), (c)(2), and (c)(3) of this section are considered acceptable procedures for determining the flow rate. They may be used in combination, and no one procedure shall take precedence over another.

(1) *Process knowledge of the wastewater.* The owner or operator may use process knowledge of the wastewater stream and/or the process to determine the annual average flow rate. The owner or operator shall use the maximum expected annual average production capacity of the process unit, knowledge of the process, and/or mass balance information to either estimate the annual average wastewater flow rate directly or estimate the total annual wastewater volume and then divide total volume by 525,600 minutes in a year. Where process knowledge is used to determine the annual average flow rate, the owner or operator shall provide sufficient information to document the flow rate for wastewater streams determined to be Group 2 wastewater streams as specified in § 60.785(g) of this subpart. Documentation to determine the annual average flow rate is not required for Group 1 streams.

(2) *Historical records.* The owner or operator may use historical records to determine the annual average flow rate. Derive the highest annual average flow rate of wastewater from historical records representing the most recent 5 years of operation or, if the process unit has been in service for less than 5 years but at least 1 year, from historical records representing the total operating life of the process unit. Where historical records are used to determine the annual average flow rate, the owner or operator shall provide sufficient information to document the flow rate for wastewater streams determined to be Group 2 wastewater streams. Documentation to determine the annual average flow rate is not required for Group 1 streams.

(3) *Measurements of flow rate.* Where an owner or operator elects to comply with paragraph (a)(1) of this section by measuring the flow rate, the owner or operator shall comply with the requirements of this paragraph (c)(3). Measurements shall be made at the point of determination, or at a location downstream of the point of determination with adjustments for flow rate changes made according to paragraph (c)(4) of this section. Where measurement data are used to determine the annual average flow rate, the owner or operator shall provide sufficient information to document the flow rate for wastewater streams determined to be Group 2 wastewater streams. Documentation to determine the annual average flow rate is not required for Group 1 streams.

(4) *Adjustment for flow rates determined downstream of the point of determination.* The owner or operator shall make corrections to the annual average flow rate of a wastewater stream when it is determined downstream of the point of determination at a location where two or more wastewater streams have been mixed or one or more wastewater streams have been treated. The owner or operator shall make corrections for such changes in the annual average flow rate.

§ 60.783 Process wastewater provisions—test methods and procedures to determine compliance.

(a) *General.* This section specifies the procedures for performance tests that are conducted to demonstrate compliance of a treatment process or a control device with the control requirements specified in § 60.779 of this subpart. Owners or operators conducting a design evaluation shall comply with the requirements of either

paragraph (a)(1) or (a)(2) of this section. Owners or operators conducting a performance test shall comply with the applicable requirements in paragraphs (a) through (i) of this section.

(1) *Performance tests and design evaluations for treatment processes.* If design steam stripper option (§ 60.779(d) of this subpart) or RCRA option (§ 60.779(h)of this subpart) is selected to comply with § 60.779 of this subpart, neither a design evaluation nor a performance test is required. For any other non-biological treatment process, the owner or operator shall conduct either a design evaluation as specified in § 60.779(j) of this subpart, or a performance test as specified in this section. For closed biological treatment processes, the owner or operator shall conduct either a design evaluation as specified in § 60.779(j) of this subpart, or a performance test as specified in this section. For each open biological treatment process, the owner or operator shall conduct a performance test as specified in this section.

Note to paragraph (a)(1): Some open biological treatment processes may not require a performance test. Refer to paragraph (h) of this section to determine whether the biological treatment process meets the criteria that exempt the owner or operator from conducting a performance test.

(2) *Performance tests and design evaluations for control devices.* The owner or operator shall conduct either a design evaluation as specified in § 60.780(d) of this subpart, or a performance test as specified in paragraph (i) of this section for control devices other than flares and paragraph (j) of this section for flares.

(3) Performance tests and compliance determinations shall be conducted according to the schedule and procedures in 40 CFR 63.7(a) and table 2A of this subpart, and the applicable sections of this subpart.

(4) 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 during the test.

(5) Performance tests shall be conducted according to the provisions of 40 CFR 63.7(e)(1) through (e)(2) and (e)(4) and table 2A of this subpart, except that performance tests shall be conducted at maximum representative operating conditions for the process. During the performance test, an owner or operator may operate the control or recovery device at maximum or minimum representative operating conditions for monitored control or recovery device parameters, whichever results in lower emission reduction.

(6) Data shall be reduced in accordance with the EPA-approved methods specified in the applicable subpart or, if other test methods are used, the data and methods shall be validated according to the protocol in Method 301 of appendix A of 40 CFR part 63.

(7) Performance tests may be waived with approval of the Administrator as specified in 40 CFR 63.7(h)(2) and table 2A of this subpart. Owners or operators who apply for a waiver of a performance test shall submit the application by the dates specified in paragraph (b)(7)(i) of this section.

(i) The application for a waiver of an initial performance test shall be submitted not later than 90 calendar days before the Notification of Compliance Status required in § 60.784(c) of this subpart is due to be submitted.

(ii) Any application for a waiver of a performance test 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 affected facility performing the required test.

(8) *Representative process unit operating conditions.* Compliance shall be demonstrated for representative operating conditions. Operations during periods of start-up, shutdown, or malfunction and periods of non-operation shall not constitute representative conditions. The owner or operator shall record the process information that is necessary to document operating conditions during the test.

(9) *Representative treatment process or control device operating conditions.* Performance tests shall be conducted when the treatment process or control device is operating at a representative inlet flow rate and concentration. If the treatment process or control device will be operating at several different sets of representative operating conditions, the owner or operator shall comply with paragraphs (a)(9)(i) and (a)(9)(ii) of this section. The owner or operator shall record information that is necessary to document treatment process or control device operating conditions during the test.

(i) *Range of operating conditions.* If the treatment process or control device will be operated at several different sets of representative operating conditions, performance testing over the entire range is not required. In such cases, the performance test results shall be supplemented with modeling and/or engineering assessments to demonstrate performance over the operating range.

(ii) *Consideration of residence time.* If concentration and/or flow rate to the treatment process or control device are not relatively constant (i.e., comparison of inlet and outlet data will not be representative of performance), the owner or operator shall consider residence time, when determining concentration and flow rate.

(10) *Testing equipment.* All testing equipment shall be prepared and installed as specified in the applicable test methods, or as approved by the Administrator.

(11) *Compounds not required to be considered in performance tests or design evaluations.* This paragraph (a)(11) applies only when test methods that speciate compounds are used. Compounds that meet the requirements specified in paragraphs (a)(11)(i), (a)(11)(ii), or (a)(11)(iii) of this section are not required to be included in the performance test.

(i) Compounds not used or produced by the chemical process unit; or

(ii) Compounds with concentrations at the point of determination that are below 1 part per million by weight; or

(iii) Compounds with concentrations at the point of determination that are below the lower detection limit where the lower detection limit is greater than 1 part per million by weight. The method shall be an analytical method for wastewater which has that compound as a target analyte.

(12) *Treatment using a series of treatment processes.* In all cases where the wastewater provisions in this subpart allow or require the use of a treatment process to comply with emission limitations, the owner or operator may use multiple treatment processes. The owner or operator complying with the requirements of § 60.779(a)(12)(i) of this subpart, when wastewater is conveyed by hard-piping, shall comply with either paragraph (a)(12)(i) or (a)(12)(ii) of this section. The owner or operator complying with the requirements of § 60.779(a)(12)(ii) of this subpart shall comply with the requirements of paragraph (a)(12)(ii) of this section.

(i) The owner or operator shall conduct the performance test across each series of treatment processes. For each series of treatment processes, inlet concentration and flow rate shall be measured either where the wastewater stream enters the first treatment process in a series of treatment processes, or prior to the first treatment process as specified in paragraph (a)(14) of this section. For each series of treatment processes, outlet concentration and flow

rate shall be measured where the wastewater stream exits the last treatment process in the series of treatment processes, except when the last treatment process is an open or a closed aerobic biological treatment process demonstrating compliance by using the procedures in paragraphs (f) or (g) of this section. When the last treatment process is either an open or a closed aerobic biological treatment process demonstrating compliance by using the procedures in paragraphs (f) or (g) of this section, inlet and outlet concentrations and flow rates shall be measured as provided in paragraphs (a)(12)(i)(A) and (a)(12)(i)(B) of this section. The mass flow rates removed or destroyed by the series of treatment processes and by the biological treatment process are all used to calculate actual mass removal (AMR) as specified in paragraph (f)(5)(ii) of this section.

(A) The inlet and outlet to the series of treatment processes prior to the biological treatment process are the points at which the wastewater enters the first treatment process and exits the last treatment process in the series, respectively, except as provided in paragraph (a)(14)(ii) of this section.

(B) The inlet to the biological treatment process shall be the point at which the wastewater enters the biological treatment process or the outlet from the series of treatment processes identified in paragraph (a)(12)(i)(A) of this section, except as provided in paragraph (a)(14)(ii) of this section.

(ii) The owner or operator shall conduct the performance test across each treatment process in the series of treatment processes. The mass flow rate removed or destroyed by each treatment process shall be added together to determine whether compliance has been demonstrated using paragraphs (c), (d), (e), (f), and (g) of this section, as applicable. If a biological treatment process is one of the treatment processes in the series of treatment processes, the inlet to the biological treatment process shall be the point at which the wastewater enters the biological treatment process or the inlet to the equalization tank if all the criteria of paragraph (a)(14)(ii) of this section are met.

(13) When using a biological treatment process to comply with § 60.779 of this subpart, the owner or operator may elect to calculate the AMR using a subset of VOC determined at the point of determination or downstream of the point of determination with adjustment for concentration and flowrate changes made according to § 60.782(b)(6) and (c)(4), respectively, of this subpart. All VOC measured to determine the RMR, except as provided by paragraph (a)(11) of this section, shall be included in the RMR calculation.

(14) The owner or operator determining the inlet for purposes of demonstrating compliance with paragraphs (e), (f), or (g) of this section may elect to comply with paragraph (a)(14)(i) or (a)(14)(ii) of the section.

(i) When wastewater is conveyed exclusively by hard-piping from the point of determination to a treatment process that is either the only treatment process or the first in a series of treatment processes (i.e., no treatment processes or other waste management units are used upstream of this treatment process to store, handle, or convey the wastewater), the inlet to the treatment process shall be at any location from the point of determination to where the wastewater stream enters the treatment process. When samples are taken upstream of the treatment process and before wastewater streams have converged, the owner or operator shall ensure that the mass flow rate of all Group 1 wastewater streams is accounted for when using § 60.779(e) or (f) of this subpart to comply and that the mass flow rate of all Group 1 and Group 2 wastewater streams is accounted for when using § 60.779(g) of this subpart to comply, except as provided in § 60.779(a)(6) of this subpart.

(ii) The owner or operator may consider the inlet to the equalization tank as the inlet to the biological treatment process if all the criteria in paragraphs (a)(14)(ii)(A) through (a)(14)(ii)(C) of this section are met. The outlet from the series of treatment processes prior to the biological treatment process is the point at which the wastewater exits the last treatment process in the series prior to the equalization tank, if the equalization tank and biological treatment process are part of a series of treatment processes. The owner or operator shall ensure that the mass flow rate of all Group 1 wastewater streams is accounted for when using § 60.779(e) or (f) of this subpart to comply and that the mass flow rate of all Group 1 and Group 2 wastewater streams is accounted for when using § 60.779(g) of this subpart to comply, except as provided in paragraph (a)(11) of this section.

(A) The wastewater is conveyed by hard-piping from either the last previous treatment process or the point of determination to the equalization tank.

(B) The wastewater is conveyed from the equalization tank exclusively by hard-piping to the biological treatment process and no treatment processes or other waste management units are used to store, handle, or convey the wastewater between the equalization tank and the biological treatment process.

(C) The equalization tank is equipped with a fixed roof and a closed vent system that routes VOC emissions to a control device that meets the requirements of 40 CFR 63.133(a)(2)(i) and (b)(1) through (b)(4).

(b) [Reserved]

(c) *Non-combustion, non-biological treatment process: percent mass removal/destruction option.* This paragraph (c) applies to performance tests that are conducted to demonstrate compliance of a noncombustion, non-biological treatment process with the percent mass removal limits specified in § 60.779(e)(1), (e)(2), and (e)(3) of this subpart for VOC. When demonstrating compliance with § 60.779(e)(1) of this subpart, the owner or operator shall comply with the requirements specified in paragraphs (c)(1) through (c)(6) of this section. When demonstrating compliance with § 60.779(e)(2) of this subpart, the owner or operator shall comply with the requirements specified in paragraphs (c)(1), (c)(2), (c)(3), and (c)(6) of this section. When demonstrating compliance with § 60.779(e)(3) of this subpart, the owner or operator shall comply with the requirements specified in paragraphs (e)(1), (e)(2), (e)(3), (e)(4), and (e)(6) of this section for each of the following VOC: methanol, ethylene glycol monobutyl ether acetate, and, methyl ethyl ketone.

(1) *Concentration.* The concentration of VOC entering and exiting the treatment process shall be determined as provided in this paragraph (c)(1). Wastewater samples shall be collected using sampling procedures which minimize loss of organic compounds during sample collection and analysis and maintain sample integrity per § 60.782(b)(5)(ii) of this subpart. The method shall be an analytical method for wastewater which has that compound as a target analyte. Samples may be grab samples or composite samples. Samples shall be taken at approximately equally spaced time intervals over a 1-hour period. Each 1-hour period constitutes a run, and the performance test shall consist of a minimum of 3 runs.

(2) *Flow rate.* The flow rate of the entering and exiting wastewater streams shall be determined using inlet and outlet flow meters, respectively. Where the outlet flow is not greater than the inlet flow, a flow meter shall be used,

and may be used at either the inlet or outlet. Flow rate measurements shall be taken at the same time as the concentration measurements.

(3) *Calculation of mass flow rate—for noncombustion, nonbiological treatment processes.*

(i) When complying with either § 60.779(e)(1) or (e)(2)of this subpart, use this paragraph (c)(3)(i), to calculate the mass flow rate of VOC entering and exiting the treatment process.

$$QMW_a = \frac{\rho}{p * 10^6}\left(\sum_{k=1}^{p} Q_{a,k} C_{T,a,k}\right) \qquad \text{(Eqn WW1)}$$

$$QMW_b = \frac{\rho}{p * 10^6}\left(\sum_{k=1}^{p} Q_{b,k} C_{T,b,k}\right) \qquad \text{(Eqn WW2)}$$

Where:

QMW_a, QMW_b = Mass flow rate of VOC, average of all runs, in wastewater entering (QMW_a) or exiting (QMW_b) the treatment process, kilograms per hour.

ρ = Density of the wastewater, kilograms per cubic meter.

$Q_{a,k}$, $Q_{b,k}$ = Volumetric flow rate of wastewater entering ($Q_{a,k}$) or exiting ($Q_{b,k}$) the treatment process during each run k, cubic meters per hour.

$C_{T,a,k}$, $C_{T,b,k}$ = Total concentration of VOC in wastewater entering ($C_{T,a,k}$) or exiting ($C_{T,b,k}$) the treatment process during each run k, parts per million by weight. Total concentration shall be based on speciated method(s) if using § 60.779(e)(1) of this subpart to comply and shall be based on either speciated or non-speciated methods if using § 60.779(e)(2) of this subpart to comply.

p = Number of runs.

k = Identifier for a run.

10^6 = conversion factor, mg/kg

(ii) When complying with § 60.779(e)(3) of this subpart, use this paragraph (c)(3)(ii) to calculate the mass flow rate of each compound, i.e., methanol, ethylene glycol monobutyl ether acetate, and methyl ethyl ketone, entering and exiting the treatment process.

$$QMW_a = \frac{\rho}{p * 10^6} Q_{a,k} + C_{T,a,k} \qquad \text{(Eqn WW1-1)}$$

$$QMW_b = \frac{\rho}{p * 10^6} Q_{b,k} + C_{T,b,k} \qquad \text{(Eqn WW2-1)}$$

Where:

QMW_a, QMW_b = Mass flow rate of a compound average of all runs, in wastewater entering (QMW_a) or existing (QMW_b) the treatment process, kilograms per hour.

ρ = Density of the wastewater, kilograms per cubic meter.

$Q_{a,k}$, $Q_{b,k}$ = Volumetric flow rate of wastewater entering ($Q_{a,k}$) or exiting ($Q_{b,k}$) the treatment process during each run k, cubic meters per hour.

$C_{,a,k}$, $C_{,b,k}$ = Concentration of a compound in wastewater entering ($C_{,a,k}$) or existing ($C_{,b,k}$) the treatment process during each run k, parts per million by weight. Concentration shall be based on speciated method(s).

p = Number of runs.

k = Identifier for a run.

10^6 = conversion factor, mg/kg

(4) *Percent removal calculation for mass flow rate.* The percent mass removal across the treatment process shall be calculated as follows if complying with § 60.779(e)(1) of this subpart:

$$E = \frac{QMW_a - QMW_b}{QMW_a} * 100 \qquad \text{(Eqn WW3)}$$

Where:

E = Removal or destruction efficiency of the treatment process, percent.

QMW_a, QMW_b = Mass flow rate of VOC in wastewater entering (QMW_a) and exiting (QMW_b) the treatment process, kilograms per hour (as calculated using Equations WW1 and WW2, or Equations WW1–2 and WW2–2).

(5) *Calculation of flow-weighted average of Fr values.* If complying with § 60.779(e)(1) of this subpart, use Equation WW8 in paragraph (d)(8) of this section to calculate the flow-weighted average of the Fr values. When the term ''combustion'' is used in Equation WW8, the term ''treatment process'' shall be used for the purposes of this paragraph. Follow the procedures in § 60.778 of this subpart to develop a stream-specific list of VOC. Follow the procedures in appendix J of this part to determine Fr values.

(6) *Compare mass removal efficiency to required efficiency.* Compare the mass removal efficiency (calculated in Equation WW3) to the required efficiency as specified in § 60.779(e) of this subpart. If complying with § 60.779(e)(1) of this subpart, compliance is demonstrated if the mass removal efficiency is greater than or equal to the flow-weighted average of the Fr values calculated in Equation WW8. If complying with § 60.779(e)(2) of this subpart, compliance is demonstrated if the mass removal efficiency is 95 percent or greater and outlet concentration is less than 50 ppmw. If complying with § 60.779(e)(3) of this subpart, compliance is demonstrated if the mass removal for methanol is greater than or equal to 31 percent, and the mass removal for ethylene glycol monobutyl ether acetate, and methyl ethyl ketone is greater than or equal to 76 percent, and the mass

removal for methyl ethyl ketone is greater than or equal to 95 percent.

(d) *Combustion treatment processes: percent mass removal/destruction option.* This paragraph (d) applies to performance tests that are conducted to demonstrate compliance of a combustion treatment process with the percent mass destruction limits specified in § 60.779(e)(1) of this subpart for VOC. The owner or operator shall comply with the requirements specified in paragraphs (d)(1) through (d)(9) of this section.

(1) *Concentration in wastewater stream entering the combustion treatment process.* The concentration of VOC entering the treatment process shall be determined as provided in this paragraph (d)(1). Wastewater samples shall be collected using sampling procedures which minimize loss of organic compounds during sample collection and analysis and maintain sample integrity per § 60.782(b)(5)(ii) of this subpart. The method shall be an analytical method for wastewater which has that compound as a target analyte. Samples may be grab samples or composite samples. Samples shall be taken at approximately equally spaced time intervals over a 1-hour period. Each 1-hour period constitutes a run, and the performance test shall consist of a minimum of 3 runs.

(2) *Flow rate of wastewater entering the combustion treatment process.* The flow rate of the wastewater stream entering the combustion treatment process shall be determined using an inlet flow meter. Flow rate measurements shall be taken at the same time as the concentration measurements.

(3) *Calculation of mass flow rate in wastewater stream entering combustion treatment processes.* The mass flow rate of VOC entering the treatment process is calculated as follows:

$$QMW_a = \frac{\rho}{p * 10^6}\left(\sum_{k=1}^{p} Q_{a,k} * C_{T,a,k}\right) \qquad \text{(Eqn WW4)}$$

Where:

QMW_a=Mass flow rate of VOC entering the combustion unit, kilograms per hour.

ρ = Density of the wastewater stream, kilograms per cubic meter.

$Q_{a,k}$=Volumetric flow rate of wastewater entering the combustion unit during run k, cubic meters per hour.

$C_{T,a,k}$=Total concentration of VOC in the wastewater stream entering the combustion unit during run k, parts per million by weight.

p=Number of runs.

k=Identifier for a run.

(4) *Concentration in vented gas stream exiting the combustion treatment process.* The concentration of VOC exiting the combustion treatment process in any vented gas stream shall be determined as provided in this paragraph (d)(4). Samples may be grab samples or composite samples. Samples shall be taken at approximately equally spaced time intervals over a 1-hour period. Each 1-hour period constitutes a run, and the performance test shall consist of a minimum of 3 runs. Concentration measurements shall be determined using Method 18, 40 CFR part 60, appendix A. Alternatively, any other test method validated according to the procedures in Method 301, 40 CFR part 60, appendix A may be used.

(5) *Volumetric flow rate of vented gas stream exiting the combustion treatment process.* The volumetric flow rate of the vented gas stream exiting the combustion treatment process shall be determined using Method 2, 2A, 2C, or 2D, CFR part 60, appendix A, as appropriate. Volumetric flow rate measurements shall be taken at the same time as the concentration measurements.

(6) *Calculation of mass flow rate of vented gas stream exiting combustion treatment processes.* The mass flow rate VOC in a vented gas stream exiting the combustion treatment process shall be calculated as follows:

[Reserved] (Eqn WW5)

$$QMG_b = K_2\left(\sum_{i=1}^{n} CG_{b,i} MW_i\right) QG_b \qquad \text{(Eqn WW6)}$$

Where:

$CG_{b,i}$=Concentration of (TOC) (minus methane and ethane) or total VOC, in vented gas stream, exiting ($CG_{b,i}$) the control device, dry basis, parts per million by volume.

QMG_b=Mass rate of TOC (minus methane and ethane) or total VOC in vented gas stream, exiting (QMG_b) the control device, dry basis, kilograms per hour.

MW_i=Molecular weight of a component, kilogram/kilogram-mole.

QG_b=Flow rate of gas stream exiting (QG_b) the control device, dry standard cubic meters per hour.

K_2=Constant, 41.57 x 10^{-9} (parts per million)$^{-1}$ (gram-mole per standard cubic meter) (kilogram/gram), where standard temperature (gram-mole per standard cubic meter) is 20° Celsius.

i=Identifier for a compound.

n=Number of components in the sample.

(7) *Destruction efficiency calculation.* The destruction efficiency of the combustion unit for VOC shall be calculated as follows:

$$E = \frac{QMW_a - QMG_b}{QMW_a} * 100 \qquad \text{(Eqn WW7)}$$

Where:

E=Destruction efficiency of VOC for the combustion unit, percent.

QMW_a=Mass flow rate of VOC entering the combustion unit, kilograms per hour.

QMG_b=Mass flow rate VOC in vented gas stream exiting the combustion treatment process, kilograms per hour.

(8) *Calculation of flow-weighted average of Fr values.* Use Equation WW8 to calculate the flow-weighted average of the Fr values. Follow the procedures in § 60.778 of this subpart to develop a stream-specific list of VOC. Follow the procedures in appendix J of this part to determine the Fr values.

$$avg = \left(\frac{\sum_{i=1}^{n} \sum_{k=1}^{p} Fr_i * C_{i,a,k} * Q_{a,k}}{\sum_{k=1}^{p} \sum_{i=1}^{n} C_{i,a,k} * Q_{a,k}} \right) * 1 \qquad \text{(Eqn WW8)}$$

Where:

Fr_{avg}=Flow-weighted average of the Fr values.

$C_{i,a,k}$=Concentration of VOC in wastewater stream entering the combustion unit, during run k, parts per million by weight.

$Q_{a,k}$=Volumetric flow rate of wastewater entering the combustion unit during run k, cubic meters per hour.

Fr_i=Compound-specific Fr value as determined by the procedures in appendix J of this part.

(9) *Calculate flow-weighted average of Fr values and compare to mass destruction efficiency.* Compare the mass destruction efficiency (calculated in Equation WW7) to the required efficiency as specified in § 60.779(e)(2) of this subpart. Compliance is demonstrated if the mass destruction efficiency is greater than or equal to the flow-weighted average of the Fr value calculated in Equation WW8.

(e) *Non-combustion treatment processes including closed biological treatment processes: RMR option.* This paragraph (e) applies to performance tests for non-combustion treatment processes other than open biological treatment processes to demonstrate compliance with the mass removal provisions for VOC. Compliance options for noncombustion nonbiological treatment processes are specified in § 60.779(f)(1) of this subpart. Compliance options for closed aerobic and anaerobic biological treatment processes are specified in § 60.779(f)(2)(i) and (g)(1)(i), and § 60.779(f)(3), and (g)(2) of this subpart. When complying with § 60.779(f)(2)(i) or (f)(3) of this subpart, the owner or operator shall comply with the requirements specified in paragraphs (e)(1) through (e)(6) of this section. When complying with § 60.779(g)(1)(i) or (g)(2) of this subpart, the owner or operator shall comply with the requirements specified in paragraphs (e)(1) through (e)(6) of this section.

(1) *Concentration in wastewater stream.* The concentration of VOC shall be determined as provided in this paragraph (e)(1). Concentration measurements to determine RMR shall be taken at the point of determination or downstream of the point of determination with adjustment for concentration change made according to § 60.782(b)(6) of this subpart. Concentration measurements to determine AMR shall be taken at the inlet and outlet to the treatment process and as provided in paragraph (a)(7) of this section for a series of treatment processes. Wastewater samples shall be collected using sampling procedures which minimize loss of organic compounds during sample collection and analysis and maintain sample integrity per § 60.782(b)(5)(ii) of this subpart. The method shall be an analytical method for wastewater which has that compound as a target analyte. Samples may be grab samples or composite samples. Samples shall be taken at approximately equally spaced time intervals over a 1-hour period. Each 1-hour period constitutes a run, and the performance test shall consist of a minimum of 3 runs.

(2) *Flow rate.* Flow rate measurements to determine RMR shall be taken at the point of determination or downstream of the point of determination with adjustment for flow rate change made according to § 60.782(c)(4) of this subpart. Flow rate measurements to determine AMR shall be taken at the inlet and outlet to the treatment process and as provided in paragraph (a)(7) of this section for a series of treatment processes. Flow rate shall be determined using inlet and outlet flow measurement devices. Where the outlet flow is not greater than the inlet flow, a flow measurement device shall be used, and may be used at either the inlet or outlet. Flow rate measurements shall be taken at the same time as the concentration measurements.

(3) *Calculation of RMR for non-combustion treatment processes including closed biological treatment processes.* When using §§ 60.779(f)(2)(i) or (f)(3) of this subpart to comply, the required mass removal of VOC for each Group 1 wastewater stream shall be calculated as specified in paragraph (e)(3)(i) of this section. When using § 60.779(g)(1)(i) or (g)(2) of this subpart to comply, the required mass removal shall be calculated as specified in paragraph (e)(3)(ii) of this section.

(i) When using § 60.779(f)(2)(i) or (f)(3) of this subpart to comply, the required mass removal of VOC for each Group 1 wastewater stream shall be calculated using Equation WW9.

$$RMR = \frac{\rho}{10^9} Q \sum_{i=1}^{n} \left(C_i * Fr_i \right) \qquad \text{(Eqn WW9)}$$

Where:

RMR=Required mass removal for treatment process or series of treatment processes, kilograms per hour.

ρ=Density of the Group 1 wastewater stream, kilograms per cubic meter.

Q=Volumetric flow rate of wastewater stream at the point of determination, liters per hour.

i=Identifier for a compound.

n=Number of VOC in stream.

C_i=Concentration of VOC at the point of determination, parts per million by weight.

Fr_i=Fraction removal value of a VOC. Follow the procedures in § 60.778 of this subpart to develop a stream-specific list of VOC. Follow the procedures in appendix J of this part to determine Fr values.

10^9=Conversion factor, mg/kg * l/m^3.

(ii) When using § 60.779(g)(1)(i) or (g)(2) of this subpart to comply, the required mass removal is 95 percent of the mass flow rate for all wastewater streams combined for treatment. The required mass removal of VOC wastewater streams combined for treatment when complying with 40 CFR 63.138(g) shall be calculated using the following equation:

$$RWR = \frac{0.95\rho}{10^9} Q \sum_{i=1}^{n} \left(C_i \right) \qquad \text{(Eqn WW9a)}$$

Where:

RMR=Required mass removal for treatment process or series of treatment processes, kilograms per hour.

ρ=Density of the wastewater stream, kilograms per cubic meter.

Q=Volumetric flow rate of wastewater stream at the point of determination, liters per hour.

i=Identifier for a compound.

n=Number of VOC in stream.

C_i=Concentration of VOC at the point of determination, parts per million by weight.

10^9=Conversion factor, mg/kg * l/m^3

(4)(i) The required mass removal is calculated by summing the required mass removal for each Group 1 wastewater stream to be combined for treatment when complying with § 60.779(f)(2)(i) or (f)(3) of this subpart.

(ii) The required mass removal is calculated by summing the required mass removal for all wastewater streams combined for treatment when complying with § 60.779(g)(1)(i) or (g)(2) of this subpart.

(5) *The AMR calculation procedure for non-combustion treatment processes including closed biological treatment processes.* The AMR shall be calculated as follows:

$$AMR = \left(QMW_a - QMW_b\right) \quad \text{(Eqn WW10)}$$

Where:

AMR=Actual mass removal of VOC achieved by treatment process or series of treatment processes, kilograms per hour.

QMW_a=Mass flow rate of VOC in wastewater entering the treatment process or first treatment process in a series of treatment processes, kilograms per hour.

QMW_b=Mass flow rate of VOC in wastewater exiting the last treatment process in a series of treatment processes, kilograms per hour.

(6) *Compare RMR to AMR.* When complying with § 60.779(f)(2)(i) or (f)(3) of this subpart, compare the RMR calculated in Equation WW9 to the AMR calculated in Equation WW10. Compliance is demonstrated if the AMR is greater than or equal to the RMR. When complying with § 60.779(g)(1)(i) or (g)(2) of this subpart, compare the RMR calculated in Equation WW9a to the AMR calculated in Equation WW10. Compliance is demonstrated if the AMR is greater than or equal to 95-percent mass removal.

(f) *Open or closed aerobic biological treatment processes: Required mass removal (RMR) option.* This paragraph (f) applies to the use of performance tests that are conducted for open or closed aerobic biological treatment processes to demonstrate compliance with the mass removal provisions for VOC. These compliance options are specified in § 60.779(f)(2)(i) and (f)(2)(ii) of this subpart. The owner or operator shall comply with the requirements specified in paragraphs (f)(1) through (f)(6) of this section. Some compounds may not require a performance test. Refer to paragraph (h) of this section and Table 14 of this subpart to determine which compounds may be exempt from the requirements of this paragraph (f).

(1) *Concentration in wastewater stream.* The concentration of VOC shall be determined as provided in this paragraph (f)(1). Concentration measurements to determine RMR shall be taken at the point of determination or downstream of the point of determination with adjustment for concentration change made according to § 60.782(b)(6) of this subpart. Concentration measurements to determine AMR shall be taken at the inlet and outlet to the treatment process and as provided in paragraph (a)(7) of this section for a series of treatment processes. Wastewater samples shall be collected using sampling procedures which minimize loss of organic compounds during sample collection and analysis and maintain sample integrity per § 60.782(b)(5)(ii) of this subpart. The method shall be an analytical method for wastewater which has that compound as a target analyte. Samples may be grab samples or composite samples. Samples shall be taken at approximately equally spaced time intervals over a 1-hour period. Each 1-hour period constitutes a run, and the performance test shall consist of a minimum of 3 runs.

(2) *Flow rate.* Flow rate measurements to determine RMR shall be taken at the point of determination or downstream of the point of determination with adjustment for flow rate change made according to § 60.782(c)(4) of this subpart. Flow rate measurements to determine AMR shall be taken at the inlet and outlet to the treatment process and as provided in paragraph (a)(7) of this section for a series of treatment processes. Flow rate shall be determined using inlet and outlet flow measurement devices. Where the outlet flow is not greater than the inlet flow, a flow measurement device shall be used, and may be used at either the inlet or outlet. Flow rate measurements shall be taken at the same time as the concentration measurements.

(3) *Calculation of RMR for open or closed aerobic biological treatment processes.* The required mass removal of VOC for each Group 1 wastewater stream shall be calculated using the following equation:

$$RMR = \frac{\rho}{10^9} Q \sum_{i=1}^{n} \left(C_i * Fr_i\right) \quad \text{(Eqn WW11)}$$

Where:

RMR=Required mass removal for treatment process or series of treatment processes, kilograms per hour.

ρ=Density of the Group 1 wastewater stream, kilograms per cubic meter.

Q=Volumetric flow rate of wastewater stream at the point of determination, liters per hour.

i=Identifier for a compound.

n=Number of VOC in stream.

C_i=Concentration of VOC at the point of determination, parts per million by weight.

Fr_i=Fraction removal value of a VOC. Follow the procedures in § 60.778 of this subpart to develop a stream-specific list of VOC. Follow the procedures in appendix J of this part to determine Fr values.

10^9=Conversion factor, mg/kg * l/m^3.

(4) The required mass removal is calculated by adding together the required mass removal for each Group 1 wastewater stream to be combined for treatment.

(5) *Actual mass removal calculation procedure for open or closed aerobic biological treatment processes.* The actual mass removal (AMR) shall be calculated using Equation WW12 as specified in paragraph (f)(5)(i) of this section when the performance test is performed across the open or closed aerobic biological treatment process only. If compliance is being demonstrated in accordance with paragraph (a)(7)(i) of this section, the AMR for the series shall be calculated using Equation WW13 in paragraph (f)(5)(ii) of this section. (This equation is for situations where treatment is performed in a series of treatment processes connected by hard-piping.) If compliance is being demonstrated in accordance with paragraph (a)(7)(ii) of this section, the AMR for the biological treatment process shall be calculated using Equation WW12 in paragraph (f)(5)(i) of this section. The AMR for the biological treatment process used in a series of treatment processes calculated using Equation WW12 shall be added to the AMR determined for each of the other individual treatment processes in the series of treatment processes.

(i) Calculate AMR for the open or closed aerobic biological treatment process as follows:

$$AMR = QMW_a * F_{bio} \quad \text{(Eqn WW12)}$$

Where:

AMR=Actual mass removal of VOC achieved by open or closed biological treatment process, kilograms per hour.

QMW_a=Mass flow rate of VOC in wastewater entering the treatment process, kilograms per hour.

F_{bio}=Site-specific fraction of VOC biodegraded. F_{bio} shall be determined as specified in paragraph (h) of this section and 40 CFR part 63, appendix C. Follow the procedures in § 60.778 of this subpart to develop a stream-specific list of VOC.

(ii) Calculate AMR across a series of treatment units where the last treatment

unit is an open or closed aerobic biological treatment process as follows:

$$AMR = QMW_a - (QMW_b)(1 - F_{bio}) \qquad \text{(Eqn WW13)}$$

Where:

AMR=Actual mass removal of VOC achieved by a series of treatment processes, kilograms per hour.

QMW_a=Mass flow rate of VOC in wastewater entering the first treatment process in a series of treatment processes, kilograms per hour.

QMW_b=Mass flow rate of VOC in wastewater exiting the last treatment process in a series of treatment processes prior to the biological treatment process, kilograms per hour.

F_{bio}=Site-specific fraction of VOC biodegraded. F_{bio} shall be determined as specified in paragraph (h) of this section and 40 CFR part 63, appendix C. Follow the procedures in § 60.778 of this subpart to develop a stream-specific list of VOC.

(6) *Compare RMR to AMR.* Compare the RMR calculated in Equation WW11 to the AMR calculated in either Equation WW12 or WW13, as applicable. Compliance is demonstrated if the AMR is greater than or equal to the RMR.

(g) *Open or closed aerobic biological treatment processes: 95-percent mass removal option.* This paragraph (g) applies to performance tests that are conducted for open or closed aerobic biological treatment processes to demonstrate compliance with the 95-percent mass removal provisions for VOC. This compliance option is specified in § 60.779(g) of this subpart. The RMR for this option is 95-percent mass removal. The owner or operator shall comply with the requirements specified in paragraphs (g)(1) of this section to determine AMR, paragraphs (e)(3)(ii) and (e)(4)(ii) of this section to determine RMR, and paragraph (g)(2) of this section to determine whether compliance has been demonstrated. Some compounds may not require a performance test. Refer to paragraph (h) of this section and Table 14 of this subpart to determine which compounds may be exempt from the requirements of this paragraph (g).

(1) The owner or operator shall comply with the requirements specified in paragraphs (f)(1), (f)(2), and (f)(5) of this section to determine AMR. References to Group 1 wastewater streams shall be deemed all wastewater streams combined for treatment for the purposes of this paragraph (g)(1).

(2) *Compare RMR to AMR.* Compliance is demonstrated if the AMR is greater than or equal to RMR.

(h) *Site-specific fraction biodegraded (F_{bio}).* The VOC are divided into two sets for the purposes of determining whether F_{bio} must be determined, and if F_{bio} must be determined, which procedures may be used to determine compound-specific kinetic parameters. These sets are VOC in Table 14 of this subpart, and all other VOC.

(1) *Performance test exemption.* If a biological treatment process meets the requirements specified in paragraphs (h)(1)(i) and (h)(1)(ii) of this section, the owner or operator is not required to determine F_{bio} and is exempt from the applicable performance test requirements specified in § 60.779 of this subpart.

(i) The biological treatment process meets the definition of ''enhanced biological treatment process'' in § 60.771 of this subpart.

(ii) At least 99 percent by weight of all VOC that are present in the aggregate of all wastewater streams using the biological treatment process to comply with § 60.779 of this subpart are compounds on Table 14 of this subpart.

(2) *F_{bio} determination.* If a biological treatment process does not meet the requirement specified in paragraph (h)(1)(i) of this section, the owner or operator shall determine F_{bio} for the biological treatment process using the procedures in 40 CFR part 63, appendix C, and paragraph (h)(2)(ii) of this section. If a biological treatment process meets the requirements of paragraph (h)(1)(i) of this section but does not meet the requirement specified in paragraph (h)(1)(ii) of this section, the owner or operator shall determine F_{bio} for the biological treatment process using the procedures in 40 CFR part 63, appendix C, and paragraph (h)(2)(i) of this section.

(i) *Enhanced biological treatment processes.* If the biological treatment process meets the definition of ''enhanced biological treatment process'' in § 60.771 of this subpart and the wastewater streams include one or more compounds not on Table 14 of this subpart that do not meet the criteria in paragraph (h)(1)(ii) of this section, the owner or operator shall determine F_{bio} for VOC not on Table 14 of this subpart using any of the procedures specified in 40 CFR part 63, appendix C. (stream-specific list) (The symbol F_{bio} represents the site specific fraction of an individual VOC that is biodegraded.) The owner or operator shall calculate F_{bio} for the VOC on Table 14 of this subpart using the defaults provided for first order biodegradation rate constants (K1) of this subpart and follow the procedure explained in Form III of 40 CFR part 63, appendix C, or any of the procedures specified in 40 CFR part 63, appendix C.

(ii) *Biological treatment processes that are not enhanced biological treatment processes.* For biological treatment processes that do not meet the definition for ''enhanced biological treatment process'' in § 60.771 of this subpart, the owner or operator shall determine the F_{bio} for VOC on Table 14 of this subpart and all other VOC using any of the procedures in 40 CFR part 63, appendix C, except procedure 3 (inlet and outlet concentration measurements).

(i) *Performance tests for control devices other than flares.* This paragraph (i) applies to performance tests that are conducted to demonstrate compliance of a control device with the efficiency limits specified in § 60.780(c) of this subpart. If complying with the 95-percent reduction efficiency requirement, comply with the requirements specified in paragraphs (i)(1) through (i)(9) of this section. If complying with the 20 ppm by volume requirement, comply with the requirements specified in paragraphs (i)(1) through (i)(6) and (i)(9) of this section. The 20 ppm by volume limit or 95 percent reduction efficiency requirement shall be measured as either total VOC or as TOC minus methane and ethane.

(1) *Sampling sites.* Sampling sites shall be selected using Method 1 or 1A of appendix A of this part, as appropriate. For determination of compliance with the 95 percent reduction requirement, sampling sites shall be located at the inlet and the outlet of the control device. For determination of compliance with the 20 parts per million by volume limit, the sampling site shall be located at the outlet of the control device.

(2) *Concentration in gas stream entering or exiting the control device.* The concentration of total VOC or TOC

in a gas stream shall be determined as provided in this paragraph (i)(2). Samples may be grab samples or composite samples (i.e., integrated samples). Samples shall be taken at approximately equally spaced time intervals over a 1-hour period. Each 1-hour period constitutes a run, and the performance test shall consist of a minimum of 3 runs. Concentration measurements shall be determined using Method 18, 40 CFR part 60, appendix A. Alternatively, any other test method validated according to the procedures in Method 301, 40 CFR part 60, appendix A may be used.

(3) *Volumetric flow rate of gas stream entering or exiting the control device.* The volumetric flow rate of the gas stream shall be determined using Method 2, 2A, 2C, or 2D, 40 CFR part 60, appendix A, as appropriate. Volumetric flow rate measurements shall be taken at the same time as the concentration measurements.

(4) *Calculation of TOC concentration.* The TOC concentration (CGT) is the sum of the concentrations of the individual components. If compliance is being determined based on TOC, the owner or operator shall compute TOC for each run using the following equation:

$$CG_T = \frac{1}{m}\sum_{j=1}^{m}\left(\sum_{i=1}^{n} CGS_{i,j}\right) \quad \text{(Eqn WW14)}$$

Where:

CG_T=Total concentration of TOC (minus methane and ethane) in vented gas stream, average of samples, dry basis, parts per million by volume.

$CGS_{i,j}$=Concentration of sample components in vented gas stream for sample j, dry basis, parts per million by volume.

i=Identifier for a compound.

n=Number of components in the sample.

j=Identifier for a sample.

m=Number of samples in the sample run.

(5) *Calculation of total VOC concentration.* The owner or operator determining compliance based on total VOC concentration (CVOC) shall compute C VOC according to the Equation WW14.

(6) *Percent oxygen correction for combustion control devices.* If the control device is a combustion device, comply with the requirements specified in paragraph (i)(6)(i) of this section to determine oxygen concentration, and in paragraph (i)(6)(ii) of this section to calculate the percent oxygen correction.

(i) *Oxygen concentration.* The concentration of TOC or total VOC shall be corrected to 3 percent oxygen if the control device is a combustion device. The emission rate correction factor for excess air, composite sampling (i.e., integrated sampling) and analysis procedures of Method 3B, 40 CFR part 60, appendix A shall be used to determine the actual oxygen concentration (%02d). The samples shall be taken during the same time that the TOC (minus methane or ethane) or total VOC samples are taken.

(ii) *3 percent oxygen calculation.* The concentration corrected to 3 percent oxygen (CGc), when required, shall be computed using the following equation:

$$CG_c = CG_T\left(\frac{17.9}{20.9 - \%O_{2d}}\right) \quad \text{(Eqn WW15)}$$

Where:

CG_c=Concentration of TOC or VOC corrected to 3 percent oxygen, dry basis, parts per million by volume.

CG_T=Total concentration of TOC (minus methane and ethane) in vented gas stream, average of samples, dry basis, parts per million by volume.

$\%0_{2d}$=Concentration of oxygen measured in vented gas stream, dry basis, percent by volume.

(7) *Mass rate calculation.* The mass rate of either TOC (minus methane and ethane) or total VOC shall be calculated using the following equations. Where the mass rate of TOC is being calculated, all organic compounds (minus methane and ethane) measured by methods specified in paragraph (i)(2) of this section are summed using Equations WW16 and WW17.

$$OMG_a = K_2\left(\sum_{i=1}^{n} CG_{a,i}MW_i\right)QG_a \quad \text{(Eqn WW16)}$$

$$OMG_b = K_2\left(\sum_{i=1}^{n} CG_{b,i}MW_i\right)QG_b \quad \text{(Eqn WW17)}$$

Where:

$CG_{a,i}$, $CG_{b,i}$=Concentration of TOC (minus methane and ethane) or total VOC, in vented gas stream, entering ($CG_{a,i}$) and exiting ($CG_{b,i}$) the control device, dry basis, parts per million by volume.

QMG_a, QMG_b=Mass rate of TOC (minus methane and ethane) or total VOC, in vented gas stream, entering (QMG_a) and exiting (QMG_b) the control device, dry basis, kilograms per hour.

Mw_i=Molecular weight of a component, kilogram/kilogram-mole.

QG_a,QG_b=Flow rate of gas stream entering (QG_a) and exiting (QG_b) the control device, dry standard cubic meters per hour.

K_2=Constant, 41.57 x 10^{-9} (parts per million)$^{-1}$ (gram-mole per standard cubic meter) (kilogram/gram), where standard temperature (gram-mole per standard cubic meter) is 20° Celsius.

i=Identifier for a compound.

n=Number of components in the sample.

(8) *Percent reduction calculation.* The percent reduction in TOC (minus methane and ethane) or total VOC shall be calculated as follows:

$$E = \frac{QMG_a - QMG_b}{QMG_a}(100\%) \qquad \text{(Eqn WW18)}$$

Where:

E=Destruction efficiency of control device, percent.

QMG_a,QMG_b=Mass rate of TOC (minus methane and ethane) or total VOC, in vented gas stream entering and exiting (QMG_b) the control device, dry basis, kilograms per hour.

(9) *Compare mass destruction efficiency to required efficiency.* If complying with the 95 percent reduction efficiency requirement, compliance is demonstrated if the mass destruction efficiency (calculated in Equation WW18) is 95 percent or greater. If complying with the 20 parts per million by volume limit in § 60.780(c) of this subpart, compliance is demonstrated if the outlet total organic compound concentration, less methane and ethane, or total VOC concentration is 20 parts per million by volume, or less. For combustion control devices, the concentration shall be calculated on a dry basis, corrected to 3 percent oxygen.

(j) *Compliance demonstration for flares.* When a flare is used to comply with § 60.780(c) of this subpart, the owner or operator shall comply with the flare provisions in 40 CFR 63.11(b) and table 2A of this subpart, and with paragraphs (j)(1), (j)(2), and (j)(3) of this section. An owner or operator is not required to conduct a performance test to determine percent emission reduction or outlet VOC or TOC concentration when a flare is used. If a compliance demonstration has been conducted previously for a flare, using the techniques specified in paragraphs (h)(1) through (h)(3) of this section, that compliance demonstration may be used to satisfy the requirements of this paragraph (j) if either no deliberate process changes have been made since the compliance demonstration, or the results of the compliance demonstration reliably demonstrate compliance despite process changes.

(1) The compliance determination shall be conducted as specified in 40 CFR 63.11(b)(4) and table 2A of this subpart, to determine visible emissions.

(2) Determine the net heating value of the gas being combusted, using the techniques specified in 40 CFR 63.11(b)(6) and table 2A of this subpart; and

(3) Determine the exit velocity using the techniques specified in either 40 CFR 63.11(b)(7)(i) (and 40 CFR 63.11(b)(7)(iii), where applicable) or 40 CFR 63.11(b)(8), and table 2A of this subpart, as appropriate.

§ 60.784 Reporting requirements.

(a) Owners or operators requesting approval to use alternative monitoring, recordkeeping, or reporting shall comply with the provisions in paragraph (b) of this section. Each owner or operator shall submit the reports specified in paragraphs (a)(1) through (a)(4) of this section, as applicable:

(1) Reports required by subpart A of part 60 of this part, as specified in table 2 of this subpart,

(2) Reports of certain subpart A provisions of 40 CFR part 63, as required by table 2A of this subpart,

(3) Reports required in paragraphs (c) through (g) of this section, and

(4) Start-up, shutdown, and malfunction reports specified in § 60.787 of this subpart.

(b) *Alternative monitoring and recordkeeping.* An owner or operator may request approval to use alternatives to the continuous operating parameter monitoring and recordkeeping provisions of this subpart.

(1) Requests for approval to use alternatives to the continuous monitoring and recordkeeping provisions shall be submitted prior to the implementation of the alternative monitoring system for which approval is being requested if not already included in the operating permit application. The request shall contain the information specified in paragraphs (b)(3) and (b)(4) of this section, as applicable.

(2) [Reserved]

(3) An owner or operator of an affected facility 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 non-automated 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:

(A) A description of the planned monitoring and recordkeeping system;

(B) Documentation that the affected facility does not have an automated monitoring and recording system;

(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:

(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.

(F) If the daily average is not an excursion, as defined in paragraphs (d)(3)(i) through (d)(3)(iii) of this section, 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 daily averages, and a demonstration that the system meets all criteria in paragraph (b)(4)(i) of this section.

(5) [Reserved]

(6) For each waste management unit, treatment process, or control device used to comply with §§ 60.774 through 60.775 of this subpart for which the owner or operator seeks to monitor a parameter other than those specified in Table 5, Table 7, and Table 8 of this subpart, the owner or operator shall submit a request for approval to monitor alternative parameters. The owner or operator who requests approval to

monitor a different parameter than those listed in Table 5, Table 7, and Table 8 of this subpart shall submit the information specified in paragraphs (b)(6)(i), (ii), and (iii) of this section.

(i) A description of the parameter(s) to be monitored to ensure the waste management unit, treatment process, or control device 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).

(ii) A description of the methods and procedures that will be used to demonstrate that the parameter indicates proper operation of the waste management unit, treatment process, or control device, the schedule for this demonstration, and a statement that the owner or operator will establish, as part of the demonstration, an operating parameter value for the monitored parameter that indicates proper operation and maintenance of the unit, process, or device.

(iii) The frequency and content of monitoring, recording, and reporting if monitoring and recording is not continuous, or if semiannual reports required under paragraph (d) of this section will not include reports of daily average values when the monitored operating parameter is not above or below (as appropriate) the operating parameter value established in paragraph (c)(7)(ii) of this section. The rationale for the proposed monitoring, recording, and reporting system shall be included.

(c) *Notification of Compliance Status.* Each owner or operator subject to this subpart shall submit a Notification of Compliance Status within 150 days after the compliance dates specified in § 60.770(a) of this subpart. The Notification of Compliance Status shall include the results of any emission point group determinations, performance tests, inspections, continuous monitoring system performance evaluations, values of monitored parameters established during performance tests, and any other information specified in paragraphs (c)(1) through (c)(14) of this section used to demonstrate compliance or required to be included in the Notification of Compliance Status.

(1) The owner or operator shall identify each designated CPU and list the components in the designated CPU. The owner or operator shall identify each affected facility and describe the process wastewater, maintenance wastewater, and aqueous in-process streams generated by the affected facility. The information shall clearly link all applicable CPU, designated CPU, and affected facilities and demonstrate that all components of a CPU were assigned to a designated CPU.

(2) For each affected facility, the owner or operator shall submit the information specified in Table 9 of this subpart for each wastewater stream generated.

(3) For each treatment process identified in Table 9 of this subpart that receives, manages, or treats a wastewater stream (i.e., Group 1 wastewater stream or Group 2 wastewater stream selected by the owner or operator for control) or residual removed from a wastewater stream, the owner or operator shall submit the information specified in Table 10 of this subpart.

(4) For each waste management unit identified in Table 9 of this subpart that receives or manages a wastewater stream (i.e., Group 1 wastewater stream or Group 2 wastewater stream selected by the owner or operator for control) or residual removed from a wastewater stream, the owner or operator shall submit the information specified in Table 11 of this subpart.

(5) For each waste management unit identified in table 9 of this subpart, the owner or operator shall include in the Notification of Compliance Status the compliance option that will be used to comply with § 60.774 of this subpart, and the applicable provisions of other subparts that the owner or operator will use to comply with the compliance option, as allowed in § 60.774 of this subpart.

(6) For each residual removed from a wastewater stream (i.e., Group 1 wastewater stream or Group 2 wastewater stream selected by the owner or operator for control), the owner or operator shall submit the information specified in Table 12 of this subpart.

(7) For each control device used to comply with §§ 60.774, 60.775, and 60.779 of this subpart, the owner or operator shall submit the information specified in paragraphs (c)(7)(i) and (c)(7)(ii) of this section.

(i) For each flare, the owner or operator shall submit the information specified in paragraphs (c)(7)(i)(A) through (c)(7)(i)(C) of this section.

(A) Flare design (i.e., steam-assisted, air-assisted, or non-assisted);

(B) All visible emission readings, heat content determinations, flow rate measurements, and exit velocity determinations made during the compliance determination as specified by § 60.780(c)(3) of this subpart; and

(C) Reports of the times and durations of all periods during the compliance determination when the pilot flame is absent or the monitor is not operating.

(ii) For each control device other than a flare, the owner or operator shall submit the information specified in paragraph (c)(7)(ii)(A) of this section and in either paragraph (c)(7)(ii)(B) or (c)(7)(ii)(C) of this section.

(A) The information in paragraphs (c)(7)(ii)(A)(*1*), (*2*), and (*3*) of this section on operating parameter values required to be established under § 60.781(f) of this subpart for the applicable parameters specified in Table 8 of this subpart, unless the operating parameter value has already been established in the operating permit.

(*1*) The specific operating parameter value of the monitored parameter(s) for each emission point;

(*2*) The rationale for the specific operating parameter value for each parameter for each emission point, including any data and calculations used to develop the value and a description of why the value indicates proper operation of the control device.

(*i*) If a performance test is conducted for a control device, the operating parameter value shall be based on the parameter values measured during the performance test supplemented by engineering analyses and/or manufacturer's recommendations. Performance testing is not required to be conducted over the entire range of permitted parameter values.

(*ii*) If a performance test is not conducted for a control device, the operating parameter value may be based solely on engineering analyses and/or manufacturer's recommendations.

(*3*) A definition of the affected facility'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.

(B) The design evaluation specified in § 60.780(d)(2) of this subpart; or

(C) Results of the performance test specified in § 60.780(d)(1) of this subpart. Performance test results shall include operating ranges of key process and control parameters during the performance test; the value, averaged over the period of the performance test, of each parameter identified in the operating permit as being monitored in accordance with § 60.781 of this subpart; and applicable supporting calculations.

(8) For each treatment process used to comply with this subpart, the owner or operator shall submit the information specified in paragraphs (c)(8)(i) and (c)(8)(ii) of this section.

(i) For Items 1 and 2 in Table 7 of this subpart, the owner or operator shall

submit the information specified in paragraphs (c)(8)(i)(A) and (c)(8)(i)(B) of this section.

(A) The information specified in paragraph (c)(6)(ii)(A) of this section for the operating parameter value required to be established under § 60.781(f) of this subpart for the monitoring parameters approved by the Administrator, unless the operating parameter value has already been established in the operating permit.

(B) Results of the initial measurements of the parameters approved by the Administrator and any applicable supporting calculations.

(ii) For Item 3 in Table 7 of this subpart, the owner or operator shall submit the information specified in paragraph (c)(7)(ii)(A) of this section for the monitored operating parameter values required to be established under § 60.781(f) of this subpart, unless the operating parameter value has already been established in the operating permit.

(9) Except as provided in paragraph (c)(9)(iii) of this section, for each waste management unit or treatment process used to comply with this subpart, the owner or operator shall submit the information specified in either paragraph (c)(9)(i) or (c)(9)(ii) of this section.

(i) The design evaluation and supporting documentation specified in § 60.779(j)(1) of this subpart.

(ii) Results of the performance test specified in § 60.779(j)(2) of this subpart. Performance test results shall include operating ranges of key process and control parameters during the performance test; the value, averaged over the period of the performance test, of each parameter identified in the operating permit as being monitored in accordance with § 60.781(f) of this subpart; and applicable supporting calculations.

(iii) If the owner or operator elects to use one of the options for treatment in a RCRA unit specified in § 60.779(h) of this subpart, the owner or operator is exempt from the requirements specified in paragraphs (c)(9)(i) and (c)(9)(ii) of this section.

(10) For performance tests and group determinations that are based on measurements, and for estimates of VOC emissions, the Notification of Compliance Status shall include one complete test report for each test method used for a particular kind of emission point. For additional tests performed for the same kind of emission point using the same method, the results and any other information required shall be submitted, but a complete test report is not required. 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.

(11) An owner or operator who transfers a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream for treatment pursuant to § 60.773(e) shall include in the Notification of Compliance Status the name and location of the transferee and a description of the Group 1 wastewater stream or residual removed from a Group 1 wastewater stream sent to the treatment facility.

(12) The owner or operator who chooses to comply with the provisions in § 60.789 of this subpart shall include in the Notification of Compliance Status a statement specifying which regulation(s) is being used to comply with this subpart.

(13) Notification that the owner or operator has elected to comply with the reduced recordkeeping program in 60.785(j) of this subpart.

(14) Notification of the waste management unit compliance option used to comply with the provisions of this subpart, as specified in § 60.774 of this subpart, shall be submitted in the Notification of Compliance Status. If the owner or operator is complying with the recordkeeping and reporting provisions of a rule other than this subpart, as specified in § 60.774 of this subpart, a statement containing this information shall be submitted.

(d) *Semiannual reports.* Each owner or operator subject to the provisions of this subpart shall submit to the Administrator semiannual reports. The reports 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 8 months after the due date of the notification of initial start-up required by § 60.7(a)(3) of this part and shall cover the 6-month period beginning on the due date of the notification of initial start-up.

(1) [Reserved]

(2) The semiannual report shall include reports of all excursions and all periods when monitoring parameters are above the maximum or below the minimum established value.

(3) The semiannual report shall include the daily average values of monitored parameters for all excursions, as defined by paragraphs (d)(3)(i), (d)(3)(ii), or (d)(3)(iii) of this section. For excursions caused by lack of monitoring data, the duration of periods when monitoring data were not collected shall be reported. For a control device where multiple parameters are monitored, if one or more of the parameters meets the excursion criteria in paragraphs (d)(3)(i), (d)(3)(ii), or (d)(3)(iii) of this section, this is considered a single excursion for the control device.

(i) When the daily average value of one or more monitored parameters is above the maximum or below the minimum (as appropriate) established operating parameter value.

(ii) When the period of control device operation is 4 hours or greater in an operating day and monitoring data are insufficient to constitute a valid hour of data for at least 75 percent of the operating hours.

(iii) When the period of control device operation is less than 4 hours in an operating day and more than one of the hours during the period of operation does not constitute a valid hour of data due to insufficient monitoring data.

(iv) Monitoring data are insufficient to constitute a valid hour of data, as used in paragraphs (d)(3)(ii) and (d)(3)(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 paragraph (b)(4) of this section, monitoring data are insufficient to calculate a valid hour of data if there are less than 4 data values recorded during the hour.

(4) Each control device is allowed one excused excursion per semiannual period. The first semiannual period is the 6-month period covered by the first semiannual report.

(5)(i) Paragraphs (d)(5)(i)(A) through (d)(5)(i)(D) of this section specify when an excursion is not a violation. In cases where continuous monitoring is required, the excursion does not count toward the number of excused excursions for determining compliance.

(A) If a monitored parameter is below the minimum established value and the affected facility is operated during such period in accordance with the affected facility's start-up, shutdown, and malfunction plan,

(B) If a monitored parameter is above the maximum established value and the affected facility is operated during such period in accordance with the affected facility's start-up, shutdown, and malfunction plan,

(C) If monitoring data are not collected during periods of start-up, shutdown, or malfunction and the

affected facility is operated during such period in accordance with the affected facility's start-up, shutdown, and malfunction plan, or

(D) If cessation of the emissions to which the monitoring applies occurs during periods of non-operation of the chemical process unit or portion thereof.

(ii) Nothing in paragraphs (d)(3) through (d)(5) 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 subpart.

(iii) Paragraphs (d)(3) through (d)(5) of this section, except paragraph (d)(5)(i) of this section, shall apply only to emission points and control devices for which continuous monitoring is required by this subpart.

(6) The semiannual report shall include results of any performance tests conducted during the reporting period including one complete report for each test method used for a particular kind of emission point tested. For additional tests performed for a similar emission point using the same method, results and any other information required shall be submitted, but a complete test report is not required. A complete test report shall contain a brief process description, sampling site data, 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.

(7) The semiannual report shall include notification that the owner or operator has elected to comply with the reduced recordkeeping program in § 60.785(j) of this subpart.

(8) The semiannual report shall include notification that the owner or operator has elected not to retain the daily average values, as specified in § 60.785(j)(2)(i) of this subpart.

(9) The semiannual report shall include periods recorded under § 60.785(f)(10) of this subpart when the vent is diverted from the control device through a bypass line, with the next semiannual report.

(10) The semiannual report shall include notification of all occurrences recorded under § 60.785(f)(11) of this subpart in which the seal mechanism is broken, the bypass line damper or valve position has changed, or the key to unlock the bypass line damper or valve was checked out, with the next semiannual report.

(11) The semiannual report shall include notification that semiannual report information for waste management units will be submitted with semiannual reports required by another rule that is one of the compliance options for waste management units as specified in § 60.784 of this subpart.

(12) The semiannual report shall include notification of each affected facility that ceases to generate at least one process wastewater stream or aqueous in-process stream or no longer produces a primary product that is a SOCMI product.

(e) *Semiannual reporting for treatment processes.* Except as provided in paragraph (g) of this section, for each treatment process used to comply with this subpart, the owner or operator shall submit as part of the next semiannual report required by paragraph (d) of this section the information specified in paragraphs (e)(1) and (e)(2) of this section.

(1) For Item 1 in Table 7 of this subpart, the owner or operator shall submit the results of measurements that indicate that the biological treatment unit is outside the parameters established in the Notification of Compliance Status or operating permit.

(2) For Item 2 in Table 7 of this subpart, the owner or operator shall submit the monitoring results for each operating day during which the daily average value of any monitored parameter was above the maximum or below the minimum operating parameter value established in the Notification of Compliance Status or operating permit.

(3) For Item 3 in Table 7 of this subpart, the owner or operator shall submit the monitoring results for each operating day during which the daily average value of any monitored parameter specified in Item 3 of Table 7 of this subpart was above the maximum or below the minimum (as appropriate) operating parameter value established in the Notification of Compliance Status or operating permit.

(f) *Semiannual reporting for control devices.* Except as provided in paragraph (g) of this section, for each control device used to comply with §§ 60.774 through 60.780 of this subpart, the owner or operator shall submit as part of the next semiannual report required by paragraph (d) of this section the information specified in either paragraph (f)(1) or (f)(2) of this section.

(1) The information specified in Table 13 of this subpart, or

(2) If the owner or operator elects to comply with § 60.781(e)(2) of this subpart, i.e., an organic monitoring device installed at the outlet of the control device, the owner or operator shall submit the monitoring results for each operating day during which the daily average concentration level or reading is above the maximum or below the minimum (as appropriate) operating parameter value established as a requirement of § 60.781(f) of this subpart or established in the facility's operating permit.

(g) Where the owner or operator obtains approval to use a treatment process or control device other than one for which monitoring requirements are specified in § 60.781 of this subpart, or to monitor parameters other than those specified in Table 7 or 8 of this subpart, the owner or operator shall comply with the appropriate reporting requirements established by the Administrator.

§ 60.785 Recordkeeping requirements.

(a) Data retention requirements are specified in paragraph (b) of this section. Each owner or operator shall keep the records specified in paragraphs (a)(1) through (a)(4) of this section, as applicable:

(1) Records required by subpart A of part 60 of this part, as specified in table 2 of this subpart,

(2) Records of certain subpart A provisions of 40 CFR part 63, as required by table 2A of this subpart,

(3) Records required in paragraphs (c) through (j) of this section, and

(4) Start-up, shutdown, and malfunction records specified in § 60.787 of this subpart.

(b) *Data retention.* Unless otherwise specified in this subpart, each owner or operator of an affected facility shall keep copies of all applicable records and reports required by this subpart for at least 5 years. All applicable records shall be maintained in such a manner that they can be readily accessed. 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 may be retained offsite. Records may be maintained in hard copy or computer-readable form including, but not limited to, on paper, microfilm, computer, floppy disk, magnetic tape, or microfiche.

(c) *Miscellaneous records.* The owner or operator shall keep the records specified in paragraphs (c)(1) through (c)(8) of this section.

(1) A record that each waste management unit inspection required by § 60.774 of this subpart was performed.

(2) A record that each inspection for control devices required by § 60.780(f) of this subpart was performed.

(3) For Item 1 and Item 2 of Table 7 of this subpart, the owner or operator shall keep the records approved by the Administrator.

(4) Except as provided in paragraph (c)(5) of this section, continuous records of the monitored parameters specified in Item 3 of Table 7, in Table 8, or in § 60.781(e)(2) of this subpart, as appropriate.

(5) Where the owner or operator obtains approval to use a treatment process or control device other than one for which monitoring requirements are specified in § 60.781 of this subpart, or to monitor parameters other than those specified in Table 7 or Table 8 of this subpart, the owner or operator shall comply with the recordkeeping requirements established by the Administrator as part of the review of the permit application or other appropriate means.

(6) The owner or operator who is complying with the provisions in § 60.789(c)(1) of this subpart shall keep a record of the information used to determine which control, testing, monitoring, recordkeeping, and reporting requirements are the most stringent.

(7) Documentation of a decision to use a delay of repair due to unavailability of parts, as specified in § 60.777(c) of this subpart, shall include a description of the failure, the reason additional time was necessary (including a statement of why replacement parts were not kept on site and when the manufacturer promised delivery), the date when repair would have been completed if parts had been available, and the date when repair was completed.

(8) The owner or operator shall keep a record of each affected facility that ceases to generate at least one process wastewater stream or aqueous in-process stream or no longer produces a primary product that is a SOCMI product.

(d) *Record of notice sent to treatment operator.* The owner or operator transferring a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream in accordance with § 60.773(e) of this subpart shall keep a record of the notice sent to the treatment operator stating that the wastewater stream or residual contains VOC which are required to be managed and treated in accordance with the provisions of this subpart.

(e) *Control device records.* For each control device used to comply with this subpart, the owner or operator shall keep a record of the information specified in paragraphs (e)(1) through (e)(3) of this section.

(1) Identification of all parts of the control device that are designated as unsafe to inspect, as specified in § 60.786(g) of this subpart, an explanation stating why the equipment is unsafe to inspect, and the plan for inspecting the equipment.

(2) Identification of all parts of the control device that are designated as difficult to inspect, as specified in § 60.786(h) of this subpart, an explanation stating why the equipment is difficult to inspect, and the plan for inspecting the equipment.

(3) For each boiler or process heater used to comply with this subpart, the owner or operator shall keep a record of any changes in the location at which the vent stream is introduced into the flame zone.

(f) *Continuous records.* Owners or operators required to keep continuous records by any section of this subpart shall keep records as specified in paragraphs (f)(1) through (f)(11) of this section, unless an alternative recordkeeping system has been requested and approved under § 60.784(b) of this subpart, except as provided in § 60.784(d)(5)(i) of this subpart.

(1) The monitoring system shall measure data values at least once every 15 minutes.

(2) The owner or operator shall record either:

(i) Each measured data value; or

(ii) Block average values for 15-minute or shorter periods calculated from all measured data values during each period or at least one measured data value per minute if measured more frequently than once per minute.

(3) If the daily average value of a monitored parameter for a given operating day is below the maximum or above the minimum established value in the report required by § 60.784(c) of this subpart or the operating permit, the owner or operator shall either:

(i) Retain block hourly average values for that operating day for 5 years and discard, at or after the end of that operating day, the 15-minute or more frequent average values and readings recorded under paragraph (f)(2) of this section; or

(ii) Retain the data recorded in paragraph (f)(2) of this section for 5 years.

(4) If the daily average value of a monitored parameter for a given operating day is above the maximum or below the minimum established value in the report required by § 60.784(c) of this subpart or operating permit, the owner or operator shall retain the data recorded that operating day under paragraph (f)(2) of this section for 5 years.

(5) Daily average values of each continuously monitored parameter shall be calculated for each operating day, and retained for 5 years, except as specified in paragraphs (f)(6) and (f)(7) of this section.

(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.

(ii) The operating day shall be the period defined in the operating permit or the report required by § 60.784(c) of this subpart. It may be from midnight to midnight or another daily period.

(6) If all recorded values for a monitored parameter during an operating day are below the maximum or above the minimum established value in the report required by § 60.784(c) of this subpart or operating permit, the owner or operator may record this fact and retain this record for 5 years rather than calculating and recording a daily average for that operating day. For these operating days, the records required in paragraph (f)(3) of this section shall also be retained for 5 years.

(7) Monitoring data recorded during periods identified in paragraphs (f)(7)(i) through (f)(7)(v) of this section shall not be included in any average computed under this subpart. Records shall be kept of the times and durations of all such periods and any other periods during process or control device operation when monitors are not operating.

(i) Monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments:

(ii) Start-ups;

(iii) Shutdowns;

(iv) Malfunctions;

(v) Periods of non-operation of the chemical process unit (or portion thereof), resulting in cessation of the emissions to which the monitoring applies.

(8) For flares, records of the times and duration of all periods during which all pilot flames are simultaneously absent shall be kept rather than daily averages.

(9) For carbon adsorbers, the owner or operator shall keep the records specified in paragraphs (e)(9)(i) and (e)(9)(ii) of this section instead of daily averages.

(i) Records of the total regeneration stream mass flow for each carbon bed regeneration cycle.

(ii) Records of the temperature of the carbon bed after each regeneration cycle.

(10) Hourly records of whether the flow indicator for bypass lines specified in § 60.786(f)(1) of this subpart was operating and whether a diversion was detected at any time during the hour. Also, records of the times of all periods when the vent is diverted from the control device or the flow indicator specified in § 60.786(f)(1) of this subpart is not operating.

(11) Where a seal or closure mechanism is used to comply with § 60.786(f)(2) of this subpart, hourly records of whether a diversion was detected at any time are not required. The owner or operator shall record whether the monthly visual inspection of the seals or closure mechanisms has been done, and shall record the occurrence of all periods when the seal mechanism is broken, the bypass line damper or valve position has changed, or the key for a lock-and-key type configuration has been checked out, and records of any car-seal that has broken.

(g) *Process knowledge records.* If the owner or operator determines that a wastewater stream is not a Group 1 wastewater stream by using process knowledge to determine the annual average concentration of a wastewater stream as specified in § 60.782(b)(3) of this subpart and/or uses process knowledge to determine the annual average flow rate as specified in § 60.782(c)(1) of this subpart, the owner or operator shall keep the documentation of how process knowledge was used to determine the annual average concentration and/or the annual average flow rate of the wastewater stream as specified in § 60.782(b)(3) or (c)(1) of this subpart, as appropriate.

(h) *Continuous monitoring system records.* For continuous monitoring systems used to comply with this subpart, records documenting the completion of calibration checks, and records documenting the maintenance of continuous monitoring systems that are specified in the manufacturer's instructions or that are specified in other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately.

(i) [Reserved]

(j) *Reduced recordkeeping program.* For any parameter with respect to any item of equipment, the owner or operator may implement the recordkeeping requirements specified in paragraph (j)(1) or (j)(2) of this section as alternatives to the continuous operating parameter monitoring and recordkeeping provisions specified in this subpart. The owner or operator shall retain for a period of 5 years each record required by paragraph (j)(1) or (j)(2) of this section.

(1) The owner or operator may retain only the daily average value, and is not required to retain more frequent monitored operating parameter values, for a monitored parameter with respect to an item of equipment, if the requirements of paragraphs (j)(1)(i) through (j)(1)(vi) of this section are met. An owner or operator electing to comply with the requirements of paragraph (j)(1) of this section shall notify the Administrator in the Notification of Compliance Status as specified in § 60.784(c)(13) of this subpart or, if the Notification of Compliance Status has already been submitted, in the semiannual report immediately preceding implementation of the requirements of paragraph (j)(1) of this section as specified in § 60.784(d)(7) of this subpart.

(i) The monitoring system is capable of detecting unrealistic or impossible data during periods of operation other than start-ups, shutdowns, or malfunctions (e.g., a temperature reading of −200°C on a boiler), and will alert the operator by alarm or other means. The owner or operator shall record the occurrence. All instances of the alarm or other alert in an operating day constitute a single occurrence.

(ii) The monitoring system generates, updated at least hourly throughout each operating day, a running average of the monitoring values that have been obtained during that operating day, and the capability to observe this running average is readily available to the Administrator on-site during the operating day. The owner or operator shall record the occurrence of any period meeting the criteria in paragraphs (j)(1)(ii)(A) through (j)(1)(ii)(C) of this section. All instances in an operating day constitute a single occurrence.

(A) The running average is above the maximum or below the minimum established limits;

(B) The running average is based on at least six 1-hour average values; and

(C) The running average reflects a period of operation other than a start-up, shutdown, or malfunction.

(iii) The monitoring system is capable of detecting unchanging data during periods of operation other than start-ups, shutdowns, or malfunctions, except in circumstances where the presence of unchanging data is the expected operating condition based on past experience (e.g., pH in some scrubbers), and will alert the operator by alarm or other means. The owner or operator shall record the occurrence. All instances of the alarm or other alert in an operating day constitute a single occurrence.

(iv) The monitoring system will alert the owner or operator by an alarm or other means, if the running average parameter value calculated under paragraph (j)(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 (j)(1) of this section, at the times specified in paragraphs (j)(1)(v)(A) through (j)(1)(v)(C). The owner or operator shall document that the required verifications occurred.

(A) Upon initial installation.

(B) Annually after initial installation.

(C) After any change to the programming or equipment constituting the monitoring system, which might reasonably be expected to alter the monitoring system's ability to comply with the requirements of this section.

(vi) The owner or operator shall retain the records identified in paragraphs (j)(1)(vi)(A) through (j)(1)(vi)(D) of this section.

(A) Identification of each parameter, for each item of equipment, for which the owner or operator has elected to comply with the requirements of paragraph (j) of this section.

(B) A description of the applicable monitoring system(s), and of how compliance will be achieved with each requirement of paragraphs (j)(1)(i) through (j)(1)(v) of this section. The description shall identify the location and format (e.g., on-line storage, log entries) for each required record. If the description changes, the owner or operator shall retain both the current and the most recent superseded description, as provided in paragraph (a) of this section, except as provided in paragraph (j)(1)(vi)(D) of this section.

(C) A description, and the date, of any change to the monitoring system that would reasonably be expected to impair its ability to comply with the requirements of paragraph (j)(1) of this section.

(D) Owners and operators subject to paragraph (j)(1)(vi)(B) of this section shall retain the current description of the monitoring system as long as the description is current, but not less than 5 years from the date of its creation. The current description shall, at all times, be retained on-site or be accessible from a central location by computer or other means that provides access within 2

hours after a request. The owner or operator shall retain all superseded descriptions for at least 5 years after the date of their creation. Superseded descriptions shall be retained on-site (or accessible from a central location by computer or other means that provides access within 2 hours after a request) for at least 6 months after their creation. Thereafter, superseded descriptions may be stored off-site.

(2) If an owner or operator has elected to implement the requirements of paragraph (j)(1) of this section for a monitored parameter with respect to an item of equipment and a period of 6 consecutive months has passed without an excursion as defined in paragraph (j)(2)(iv) of this section, the owner or operator is no longer required to record the daily average value for any operating day when the daily average 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 accomplished during the period prior to the compliance date was required and/or approved by the Administrator.

(i) If the owner or operator elects not to retain the daily average values, the owner or operator shall notify the Administrator in the next semiannual report as specified in § 60.784(d)(8) of this subpart. The notification shall identify the parameter and unit of equipment.

(ii) If, on any operating day after the owner or operator has ceased recording daily average values as provided in paragraph (j)(2) of this section, there is an excursion as defined in paragraph (j)(2)(iv) of this section, the owner or operator shall immediately resume retaining the daily average value for each operating day and shall notify the Administrator in the next semiannual report. The owner or operator shall continue to retain each daily average value until another period of 6 consecutive months has passed without an excursion as defined in paragraph (j)(2)(iv) of this section.

(iii) The owner or operator shall retain the records specified in paragraphs (j)(1)(i) through (j)(1)(iv) of this section, for the duration specified in paragraph (j) of this section. For any calendar week, if compliance with paragraphs (j)(1)(i) through (j)(1)(iv) of this section does not result in retention of a record of at least one occurrence or measured parameter value, the owner or operator shall record and retain at least one parameter value during a period of operation other than a start-up, shutdown, or malfunction.

(iv) For purposes of paragraph (j) 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 that the daily average value during any start-up, shutdown, or malfunction shall not be considered an excursion for purposes of paragraph (j)(2) of this section, if the owner or operator follows the applicable provisions of the start-up, shutdown, and malfunction plan required by § 60.787 of this subpart. An excused excursion, as described in § 60.784(d)(4) of this subpart, shall not be considered an excursion for purposes of this paragraph (j)(2).

§ 60.786 Leak inspection provisions.

(a) For each vapor collection system, closed-vent system, fixed roof, cover, or enclosure required to comply with this section, the owner or operator shall comply with the requirements of paragraphs (b) through (i) of this section, unless otherwise specified in this subpart.

(b) Except as provided in paragraphs (g) and (h) of this section, each vapor collection system and closed-vent system shall be inspected according to the procedures and schedule specified in paragraphs (b)(1) and (b)(2) of this section and each fixed roof, cover, and enclosure shall be inspected according to the procedures and schedule specified in paragraph (b)(3) of this section.

(1) If the vapor collection system or closed vent system is constructed of hard-piping, the owner or operator shall:

(i) Conduct an initial inspection according to the procedures in paragraph (c) of this section; 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 duct work, the owner or operator shall:

(i) Conduct an initial inspection according to the procedures in paragraph (c) of this section, 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 duct work, the owner or operator shall:

(i) Conduct an initial inspection according to the procedures in paragraph (c) of this section; and

(ii) Conduct annual inspections according to the procedures in paragraph (c) of this section.

(iii) Conduct annual visual inspections for visible, audible, or olfactory indications of leaks.

(3) For each fixed roof, cover, and enclosure, the owner or operator shall:

(i) Conduct an initial inspection according to the procedures in paragraph (c) of this section; and

(ii) Conduct semi-annual visual inspections for visible, audible, or olfactory indications of leaks.

(c) Each vapor collection system, closed vent system, fixed roof, cover, and enclosure shall be inspected according to the procedures specified in paragraphs (c)(1) through (c)(6) of this section.

(1) Inspections shall be conducted in accordance with Method 21, 40 CFR part 60, appendix A, and with the exceptions and modifications specified in this subpart.

(2) The detection instrument shall meet the performance criteria of Method 21, 40 CFR part 60, appendix A except the instrument response factor criteria in Section 3.1.2(a) of Method 21 shall be for the average composition of the process fluid not each individual VOC in the stream.

(i) Except as provided in paragraph (c)(2)(ii) of this section, the detection instrument shall meet the performance criteria of Method 21, 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the process fluid not each individual VOC in the stream. For process streams that contain nitrogen, air, or other inerts which are not organic hazardous air pollutants or VOCs, the average stream response factor shall be calculated on an inert-free basis.

(ii) If no instrument is available at the plant site that will meet the performance criteria specified in paragraph (c)(2)(i) of this section, the instrument readings may be adjusted by multiplying by the average response factor of the process fluid, calculated on an inert-free basis as described in paragraph (c)(2)(i) of this section.

(3) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21, 40 CFR part 60, appendix A.

(4) Calibration gases shall be as follows:

(i) Zero air (less than 10 parts per million hydrocarbon in air); and

(ii) Mixtures of methane in air at a concentration less than 10,000 parts per million. A calibration gas other than methane in air may be used if the instrument does not respond to methane or if the instrument does not meet the performance criteria specified in

paragraph (c)(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 the air.

(5) An owner or operator may elect to adjust or not adjust instrument readings for background. If an owner or operator elects to not adjust readings for background, all such instrument readings shall be compared directly to the applicable leak definition to determine whether there is a leak. If an owner or operator elects to adjust instrument readings for background, the owner or operator shall measure background concentration using the procedures in 40 CFR 63.180(b) and (c). The owner or operator shall subtract background reading from the maximum concentration indicated by the instrument.

(6) 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 compliance.

(d) Leaks, as indicated by an instrument reading greater than 500 parts per million above background or by visual inspections, shall be repaired as soon as practical, except as provided in paragraph (e) 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.

(e) Delay of repair of a vapor collection system, closed vent system, fixed roof, cover, or enclosure for which leaks have been detected is allowed if the repair is technically infeasible without a 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 shutdown.

(f) For each vapor collection system or closed vent system that contains bypass lines that could divert emissions away from a control device, the owner or operator shall comply with the provisions of either paragraph (f)(1) or (f)(2) of this section. Equipment such as low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, and pressure relief valves needed for safety purposes are not subject to this paragraph (f).

(1) 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 § 60.785(f)(10) of this subpart. The flow indicator shall be installed at the entrance to any bypass line that could divert emissions away from the control device and to the atmosphere; or

(2) Secure the bypass line damper or valve in the non-diverting position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure that the damper or valve is maintained in the non-diverting position and emissions are not diverted through the bypass line. Records shall be generated as specified in § 60.785(e)(11) of this subpart.

(g) Any parts of the vapor collection system, closed vent system, fixed roof, cover, or enclosure that are designated, as described in paragraph (i)(1) of this section, as unsafe to inspect are exempt from the inspection requirements of paragraphs (b)(1), (b)(2), and (b)(3)(i) of this section if:

(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 (b)(1), (b)(2), or (b)(3)(i) 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.

(h) Any parts of the vapor collection system, closed vent system, fixed roof, cover, or enclosure that are designated, as described in paragraph (i)(2) of this section, as difficult to inspect are exempt from the inspection requirements of paragraphs (b)(1), (b)(2), and (b)(3)(i) of this section if:

(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 owner or operator has a written plan that requires inspection of the equipment at least once every 5 years.

(i) The owner or operator shall record the information specified in paragraphs (i)(1) through (i)(5) of this section.

(1) Identification of all parts of the vapor collection system, closed vent system, fixed roof, cover, or enclosure 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 vapor collection system, closed vent system, fixed roof, cover, or enclosure 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 vapor collection system or 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 (i)(3)(i) or (i)(3)(ii) of this section.

(i) Hourly records of whether the flow indicator specified under paragraph (f)(1) of this section was operating and whether a diversion was detected at any time during the hour, as well as records of the times of all periods when the vent stream is diverted from the control device or the monitor is not operating.

(ii) Where a seal mechanism is used to comply with paragraph (f)(2) of this section, hourly records of flow are not required. In such cases, the owner or operator shall record whether the monthly visual inspection of the seals or closure mechanisms has been done, and shall record the occurrence of all periods when the seal mechanism is broken, the bypass line valve position has changed, or the key for a lock-and-key type configuration has been checked out, and records of any car-seal that has broken.

(4) For each inspection during which a leak is detected, a record of the information specified in paragraphs (i)(4)(i) through (i)(4)(viii) of this section.

(i) The instrument identification numbers; the name or initials of the person conducting the inspection; and identification of the equipment.

(ii) The date the leak was detected and the date of the first attempt to repair the leak.

(iii) Maximum instrument reading measured by the method specified in paragraph (d) of this section after the leak is successfully repaired or determined to be nonrepairable.

(iv) ''Repair delayed'' and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.

(v) The name, initials, or other form of identification of the owner or operator (or designee) whose decision it was that repair could not be effected without a shutdown.

(vi) The expected date of successful repair of the leak if a leak is not repaired within 15 calendar days.

(vii) Dates of shutdowns that occur while the equipment is unrepaired.

(viii) The date of successful repair of the leak.

(5) For each inspection conducted in accordance with paragraph (c) 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.

(6) For each visual inspection conducted in accordance with paragraph (b)(1)(ii) or (b)(3)(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.

§ 60.787 Additional Requirements—Start-up, Shutdown, Malfunction, or Nonoperation; Alternative Means of Emission Limitation; and Permits

(a) *Applicability of this subpart during periods of start-up, shutdown, malfunction, or non-operation.* Paragraphs (a)(1) through (a)(4) of this section shall be followed during periods of start-up, shutdown, malfunction, or non-operation of the affected facility or any part thereof.

(1) The emission limitations set forth in this subpart and the emission limitations referred to in this subpart shall apply at all times except during periods of non-operation of the affected facility (or specific portion thereof) resulting in cessation of the emissions to which this subpart applies. The emission limitations of this subpart and the emission limitations referred to in this subpart shall not apply during periods of start-up, shutdown, or malfunction. During periods of start-up, shutdown, or malfunction, the owner or operator shall follow the applicable provisions of the start-up, shutdown, and malfunction plan as specified in 40 CFR 63.6(e)(3) and table 2A of this subpart. However, if a start-up, shutdown, malfunction, or period of non-operation of one portion of an affected facility does not affect the ability of a particular emission point to comply with the emission limitations to which it is subject, then that emission point shall still be required to comply with the applicable provisions of this subpart during the start-up, shutdown, malfunction, or period of non-operation.

(2) The owner or operator shall not shut down items of equipment that are required or utilized for compliance with this subpart during periods of start-up, shutdown, or malfunction during times when emissions, wastewater streams, or residuals are being routed to such items of equipment, if the shutdown would contravene requirements of this subpart applicable to such items of equipment. This paragraph (a)(2) does not apply if the item of equipment is malfunctioning. This paragraph (a)(2) also does not apply if the owner or operator shuts down the compliance equipment (other than monitoring systems) to avoid damage due to a contemporaneous start-up, shutdown, or malfunction of the affected facility or portion thereof. If the owner or operator has reason to believe that monitoring equipment would be damaged due to a contemporaneous start-up, shutdown, or malfunction of the affected facility or portion thereof, the owner or operator shall provide documentation to the Administrator, as soon as possible, supporting such a claim. Once approved by the Administrator, the provision for ceasing to collect, during a start-up, shutdown, or malfunction, monitoring data that would otherwise be required by the provisions of this subpart must be incorporated into the start-up, shutdown, malfunction plan for that affected facility.

(3) During start-ups, shutdowns, and malfunctions when the emission limitations of this subpart do not apply pursuant to paragraphs (a)(1) and (a)(2) of this section, the owner or operator shall implement, to the extent reasonably available, measures to prevent or minimize excess emissions. For purposes of this paragraph (a)(3), the term ''excess emissions'' means emissions in excess of those that would have occurred if there were no start-up, shutdown, or malfunction and the owner or operator complied with the relevant provisions of this subpart. The measures to be taken shall be identified in the applicable start-up, shutdown, and malfunction plan, and may include, but are not limited to, air pollution control technologies, recovery technologies, work practices, pollution prevention, monitoring, and/or changes in the manner of operation of the affected facility. Back-up control devices are not required, but may be used if available.

(b) *Start-up, shutdown, and malfunction plan.* The owner or operator of an affected facility shall develop and implement a written start-up, shutdown, and malfunction plan as specified in 40 CFR 63.6(e)(3) and table 2A of this subpart. This plan shall describe, in detail, procedures for operating and maintaining the affected facility during periods of start-up, shutdown, and malfunction and a program for corrective action for malfunctioning process and air pollution control equipment used to comply with this subpart. A provision for ceasing to collect, during a start-up, shutdown, or malfunction, monitoring data that would otherwise be required by the provisions of this subpart may be included in the start-up, shutdown, and malfunction plan only if the owner or operator has demonstrated to the Administrator that the monitoring system would be damaged or destroyed if it were not shut down during the start-up, shutdown, or malfunction. The affected facility shall keep the start-up, shutdown, and malfunction plan on-site.

(1) *Records of start-up, shutdown, and malfunction.* The owner or operator shall keep the records specified in paragraphs (b)(1)(i) and (b)(1)(ii) of this section.

(i) Records of the occurrence and duration of each start-up, shutdown, and malfunction of operation of process equipment or control devices or recovery devices or continuous monitoring systems used to comply with this subpart during which excess emissions (as defined in paragraph (a)(3) of this section) occur.

(ii) For each start-up, shutdown, or malfunction during which excess emissions (as defined in paragraph (a)(3) of this section) occur, records reflecting whether the procedures specified in the affected facility's start-up, shutdown, and malfunction plan were followed, and documentation of actions taken that are not consistent with the plan. For example, if a start-up, shutdown, and malfunction plan includes procedures for routing a control device to a backup control device, records shall be kept of whether the plan was followed. These records may take the form of a ''checklist,'' or other form of recordkeeping that confirms conformance with the start-up shutdown, and malfunction plan for the event.

(2) *Reports of start-up, shutdown, and malfunction.* For the purposes of this subpart, the start-up, shutdown, and malfunction reports shall be submitted on the same schedule as the semiannual reports required under § 60.784(d) of this subpart. Said reports shall include the information specified in paragraphs (b)(1)(i) and (b)(1)(ii)of this section and shall contain the name, title, and signature of the owner or operator or other responsible official who is certifying its accuracy.

(b) *Alternative means of emission limitation.* If, in the judgment of the Administrator, an alternative means of emission limitation will achieve a reduction in VOC emissions at least equivalent to the reduction in VOC achieved under any design, equipment, work practice, or operational standards in this subpart, the Administrator will publish 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 notice under paragraph (b) of this section shall be published only after public notice and an opportunity for a hearing.

(3) 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.

(c) *Permit.* Each owner or operator of an affected facility subject to this subpart shall obtain a permit under 40 CFR part 70 or part 71 from the appropriate permitting authority. If EPA has approved a State operating permit program under 40 CFR part 71, the permit shall be obtained from the State authority. If the State operating permit program has not been approved, the owner or operator shall apply to the EPA regional office pursuant to 40 CFR part 70.

§ 60.788 [Reserved]

§ 60.789 Relationship to other regulations.

(a) The owner or operator who is subject to the provisions of this section shall include in the Notification of Compliance Status a statement specifying the options being used to comply with the provisions of this section.

(b) *Relationship to benzene waste.* After the compliance dates specified in § 60.770 of this subpart, the owner or operator of a Group 1 or Group 2 wastewater stream that is also subject to the provisions of 40 CFR part 61, subpart FF is required to comply with the provisions of both this subpart and 40 CFR part 61, subpart FF. Alternatively, the owner or operator may elect to comply with the provisions of paragraphs (b)(1) and (b)(2) of this section, which shall constitute compliance with the provisions of 40 CFR part 61, subpart FF.

(1) Comply with the provisions of this subpart; and

(2) For any Group 2 wastewater stream or organic stream whose benzene emissions are subject to control through the use of one or more treatment processes or waste management units under the provisions of 40 CFR part 61, subpart FF on or after September 12, 1994, comply with the requirements of this subpart for Group 1 wastewater streams.

(c) *Relationship to RCRA.* After the compliance dates specified in § 60.770 of this subpart, the owner or operator of any Group 1 or Group 2 wastewater stream that is also subject to provisions in 40 CFR parts 260 and 272 shall comply with the requirements of either paragraph (c)(1) or (c)(2) of this section.

(1) For each Group 1 or Group 2 wastewater stream, the owner or operator shall comply with the more stringent control requirements (e.g., waste management units, numerical treatment standards, etc.) and the more stringent testing, monitoring, recordkeeping, and reporting requirements that overlap between the provisions of this subpart and the provisions of 40 CFR parts 260 through 272. The owner or operator shall keep a record of the information used to determine which requirements were the most stringent and shall submit this information if requested by the Administrator; or

(2) The owner or operator shall submit, no later than four months before the applicable compliance date specified in § 60.770 of this subpart, a request for a case-by-case determination of requirements. The request shall include the information specified in paragraphs (c)(2)(i) and (c)(2)(ii) of this section.

(i) Identification of the wastewater streams that are subject to this subpart and to the provisions in 40 CFR parts 260 through 272, determination of the Group 1/Group 2 status of those streams using the provisions specified in this subpart, determination of whether or not those streams are listed or exhibit a characteristic as specified in 40 CFR part 261, and determination of whether the waste management unit is subject to permitting under 40 CFR part 270.

(ii) Identification of the specific control requirements (e.g., waste management units, numerical treatment standards, etc.) and testing, monitoring, recordkeeping, and reporting requirements that overlap between the provisions of this subpart and the provisions of 40 CFR parts 260 through 272.

(d) *Overlap with the Vinyl Chloride NESHAP.* After the compliance dates specified in § 60.770 of this subpart, the owner or operator of a Group 1 and Group 2 wastewater stream that is also subject to the provisions of 40 CFR part 61 subpart F shall comply with the provisions of either paragraph (d)(1) or (d)(2) of this section.

(1) The owner or operator shall comply with the provisions of both this subpart and 40 CFR part 61 subpart F or

(2) The owner or operator may submit, no later than four months before the applicable compliance date specified in § 60.770 of this subpart, information demonstrating how compliance with 40 CFR Part 61, subpart F, will also ensure compliance with this subpart. The information shall include a description of the testing, monitoring, reporting, and recordkeeping that will be performed.

(e) *Overlap with the HON.* After the compliance dates specified in § 60.770 of this subpart, the owner or operator of any Group 1 or Group 2 process wastewater stream that is also subject to and controlled according to the provisions in 40 CFR, subpart G shall comply with either 40 CFR, subpart G or this subpart.

(f) *Overlap with other regulations for monitoring, recordkeeping, or reporting with respect to combustion devices, recovery devices, or recapture devices.* After compliance dates specified in § 60.770 of this subpart, if any combustion device, recovery device, or recapture device subject to this subpart is also subject to monitoring, recordkeeping, and reporting requirements in 40 CFR part 264, subpart AA or CC, or is subject to monitoring and recordkeeping requirements in 40 CFR part 265, subpart AA or CC and other owner or operator complies with the periodic reporting requirements under 40 CFR part 264, subpart AA or CC that would apply to the device if the facility had final-permitted status, the owner or operator may elect to comply with the monitoring, recordkeeping, and reporting requirements of this subpart, or with the monitoring, recordkeeping, and reporting requirements in 40 CFR parts 264 and/or 265, as described in this paragraph (f), which shall constitute compliance with the monitoring, recordkeeping, and reporting requirements of this subpart.

TABLE 1 TO SUBPART YYY—LIST OF SOCMI CHEMICALS

Chemical name [a]	CAS No. [b]
(1,1,2-) Trichloro (1,2,2-) trifluoroethane	76131
(2-Ethylhexyl) amine	104756
1,4-Dichlorobutene	110576
1-Butene	106989

TABLE 1 TO SUBPART YYY—LIST OF SOCMI CHEMICALS—Continued

Chemical name [a]	CAS No. [b]
1-Methyl-2-pyrrolidone	872504
1-Naphthyl-N-methylcarbamate	
1-Phenyl ethyl hydroperoxide	3071327
2-Butene	25167673
2-Butyne-1,4-diol	110656
2-Chloro-1,3-butadiene (Chloroprene)	126998
2-Chloro-4-(ethylamino)-6-(isopropylamino)-S-triazine	1912249
2-Ethylhexanol (2-ethyl-1-hexanol)	104767
2-Hexenedinitrile	13042029
3,4-Dichloro-1-butene	64037543
3-Hexenedinitrile	1119853
3-Pentenenitrile	4635874
6-Ethyl-1,2,3,4-tetrahydro-9,10-antracenedione	15547178
Acenaphthene	83329
Acetal (1,1-diethoxy-ethane)	105577
Acetaldehyde	75070
Acetaldol (3-hydroxy-butanal)	107891
Acetamide	60355
Acetanilide	103844
Acetic anhydride	108247
Acetic acid	64197
Acetoacetanilide	102012
Acetone cyanohydrin	75865
Acetone	67641
Acetonitrile	75058
Acetophenone	98862
Acetyl chloride	75365
Acetylene tetrabromide (1,1,2,2-tetrabromoethane)	79276
Acetylene	74862
Acrolein	107028
Acrylamide	79061
Acrylic acid	79107
Acrylonitrile	107131
Adipic acid	124049
Adiponitrile	111693
Alcohols, C–11 or higher, mixtures	
Alcohols, C–11 or lower, mixtures	
Alizarin	72480
Alkyl naphthalenes	
Alkyl naphthalene sulfonates	
Alkyl anthraquinones	
Allyl cyanide	109751
Allyl chloride	107051
Allyl bromide	106956
Allyl alcohol	107186
Aluminum acetate	7360443
Aluminum formates	
Aminobenzoic acid (p-)	1321115
Aminoethylethanolamine	111411
Aminophenol sulfonic acid	
Aminophenol (p-)	123308
Ammonium acetate	631618
Ammonium thiocyanate	1762954
Amyl acetates	628637
	123922
Amyl chloride (n-)	543599
Amyl phenol	1322061
Amyl chlorides (mixed)	
Amyl mercaptans	110667
Amyl alcohols (mixed)	30899195
Amyl alcohol (tert-)	75854
Amyl alcohol (n-) (1-pentanol)	71410
Amyl ether	693652
Amylamines	110587
Amylene	513359
Amylenes, mixed	
Aniline	62533
Aniline hydrochloride	142041
Anisidine (p-)	29191524
Anisidine (o-)	90040
Anisole (methoxy benzene)	100663
Anthracene	120127

TABLE 1 TO SUBPART YYY—LIST OF SOCMI CHEMICALS—Continued

Chemical name [a]	CAS No. [b]
Anthranilic acid	118923
Anthraquinone	84651
ar-Methylbenzenediamine	25376458
Azobenzene	103333
Barium acetate	543806
Benzaldehyde	100527
Benzamide	55210
Benzene	71432
Benzenedisulfonic acid	98486
Benzenesulfonic acid	98113
Benzenesulfonic acid C_{10-16}-alkyl derivatives, sodium salts	68081812
Benzidine	
Benzil	134816
Benzilic acid	76937
Benzoguanamine	
Benzoic acid	65850
Benzoin	119539
Benzonitrile	100470
Benzophenone	119619
Benzotrichloride	98077
Benzoyl chloride	98884
Benzoyl peroxide	94360
Benzyl acetate	140114
Benzyl chloride	100447
Benzyl alcohol	100516
Benzyl dichloride	98873
Benzyl benzoate	120514
Benzylamine	100469
Benzylideneacetone	1896624
Biphenyl	92524
Bis(Chloromethyl)Ether	542881
Bisphenol A	80057
Brometone	
Bromobenzene	108861
Bromoform	75252
Bromonaphthalene	27497514
Butadiene and butene fractions	
Butadiene (1,3-)	106990
Butane	106978
Butanediol (1,4-)	110634
Butanes, mixed	
Butenes, mixed	
Butyl hydroperoxide (tert-)	75912
Butyl acetate (sec-)	105464
Butyl chloride (tert-)	507200
Butyl alcohol (tert-)	75650
Butyl benzoate	136607
Butyl mercaptan (n-)	109795
Butyl acrylate (n-)	141322
Butyl mercaptan (tert-)	75661
Butyl methacrylate (n-)	97881
Butyl alcohol (sec-)	78922
Butyl acetate (tert-)	540885
Butyl acetate (n-)	123864
Butyl methacrylate (tert-)	
Butyl toluene (tert-)	98511
Butyl phenol (tert-)	88186
Butyl alcohol (n-)	71363
Butylamine (t-)	75649
Butylamine (s-)	13952846
Butylamine (n-)	109739
Butylbenzene (tert-)	98066
Butylbenzoic acid (p-tert-)	98737
Butylbenzyl phthalate	85867
Butylene glycol (1,3-)	107880
Butylenes (n-)	
Butyraldehyde (n-)	123728
Butyric acid (n-)	107926
Butyric anhydride (n-)	106310
Butyrolacetone	96480
Butyronitrile	109740
Calcium acetate	62544

TABLE 1 TO SUBPART YYY—LIST OF SOCMI CHEMICALS—Continued

Chemical name [a]	CAS No. [b]
Calcium propionate	4075814
Caproic acid	142621
Caprolactam	105602
Carbaryl	63252
Carbazole	86748
Carbon tetrabromide	558134
Carbon disulfide	75150
Carbon tetrachloride	56235
Carbon tetrafluoride	75730
Cellulose acetate	9004357
Chloral	75876
Chloranil (o-chloranil)	2435532
Chloranil (p-chloranil)	118752
Chloroacetic acid	79118
Chloroacetophenone (2-)	532274
Chloroaniline (o-)	95512
Chloroaniline (p-)	106478
Chloroaniline (m-)	108429
Chlorobenzaldehyde (4-)	104881
Chlorobenzaldehyde (2-)	89985
Chlorobenzaldehyde (3-)	587042
Chlorobenzene	108907
Chlorobenzoic acid	118912
	535808
	74113
Chlorobenzotrichloride (p-)	5216251
Chlorobenzotrichloride (o-)	2136892
Chlorobenzoyl chloride (p-)	122010
Chlorobenzoyl chloride (o-)	609654
Chlorodifluoroethane	25497294
Chlorodifluoromethane	75456
Chlorofluorocarbons	
Chloroform	67663
Chlorohydrin	
Chloronaphthalene	25586430
Chloronitrobenzene (o-)	88733
Chloronitrobenzene (m-)	121733
Chloronitrobenzene (p-)	100005
Chlorophenol (o-)	95578
Chlorophenol (m-)	108430
Chlorophenol (p-)	106489
Chlorosulfonic acid	7790945
Chlorotoluene (m-)	108418
Chlorotoluene (o-)	95498
Chlorotoluene (p-)	106434
Chlorotrifluoroethylene	79389
Chlorotrifluoromethane	75729
Choline chloride	67481
Chrysene	218019
Cinnamic acid	140103
Citric acid	77929
Cobalt acetate	
Copper acetate	142712
Cresol and cresylic acid (o-)	95487
Cresol and cresylic acid (p-)	106445
Cresol and cresylic acid (m-)	108394
Cresols and cresylic acids (mixed)	1319773
Crotonaldehyde	4170300
Crotonic acid	3724650
Cumene hydroperoxide	80159
Cumene	98828
Cyanamide	420042
Cyanoacetic acid	372098
Cyanoformamide	
Cyanogen chloride	506774
Cyanuric acid	108805
Cyanuric chloride	108770
Cyclohexane, oxidized	68512152
Cyclohexane	110827
Cyclohexanol	108930
Cyclohexanone oxime	100641
Cyclohexanone	108941

TABLE 1 TO SUBPART YYY—LIST OF SOCMI CHEMICALS—Continued

Chemical name [a]	CAS No. [b]
Cyclohexene	110838
Cyclohexylamine	108918
Cyclooctadiene	29965977
Cyclooctadiene (1,3-)	3806595
Cyclooctadiene (1,5-)	111784
Cyclopentadiene (1,3-)	
Cyclopropane	75194
Decahydronaphthalene	91178
Decanol	112301
Decyl alcohol (1-decanol)	112301
Di-o-tolyguanidine	97392
Di(2-methoxyethyl) phthalate	
Di-n-heptyl-n-nonyl undecyl phthalate	
Diacetone alcohol	123422
Diacetoxy-2-Butene (1,4-)	
Diallyl phthalate	131179
Diallyl isophthalate	
Diaminobenzoic acids	27576041
Diaminophenol hydrochloride	137097
Dibromomethane	74953
Dibutanized aromatic concentrate	
Dibutoxyethyl phthalate	
Dichloro-1-butene (3,4-)	760236
Dichloro-2-butene (1,4-)	764410
Dichloro-2-butenes	
Dichloroaniline (mixed isomers)	27134276
Dichlorobenzene (p-)	106467
Dichlorobenzene (m-)	541731
Dichlorobenzene (o-)	95501
Dichlorobenzidine (3,3′-)	91941
Dichlorodifluoromethane	75718
Dichlorodimethylsilane	75785
Dichloroethane (1,2-) (Ethylene dichloride) (EDC)	107062
Dichloroethyl ether (bis(2-chloroethyl)ether)	111444
Dichloroethylene (1,2-)	540590
Dichlorofluoromethane	75434
Dichlorohydrin (a-)	96231
Dichloromethyl ether	
Dichloronitrobenzenes	
Dichloropentanes	
Dichlorophenol (2,4-)	120832
Dichloropropane (1,1-)	78999
Dichloropropene (1,3-)	542756
Dichloropropene/dichloropropane (mixed)	
Dichlorotetrafluoroethane	1320372
Dicyandiamide	461585
Dicyclohexylamine	101837
Dicyclopentadiene	77736
Diethanolamine (2,2′-Iminodiethanol)	111422
Diethyl phthalate	84662
Diethyl sulfate	64675
Diethylamine	109897
Diethylaniline (N,N-)	91667
Diethylaniline (2,6-)	579668
Diethylbenzene	25340174
Diethylene glycol monoethyl ether	111900
Diethylene glycol dimethyl ether	111966
Diethylene glycol	111466
Diethylene glycol monobutyl ether acetate	124174
Diethylene glycol monomethyl ether	111773
Diethylene glycol diethyl ether	112367
Diethylene glycol monomethyl ether acetate	629389
Diethylene glycol monoethyl ether acetate	112152
Diethylene glycol monohexyl ether	112594
Diethylene glycol monobutyl ether	112345
Diethylene glycol dibutyl ether	112732
Difluoroethane (1,1-)	75376
Dihydroxybenzoic acid (Resorcylic acid)	27138574
Diisobutylene	25167708
Diisodecyl phthalate	26761400
Diisononyl phthalate	28553120
Diisooctyl phthalate	27554263

TABLE 1 TO SUBPART YYY—LIST OF SOCMI CHEMICALS—Continued

Chemical name [a]	CAS No.[b]
Diisopropylamine	108189
Diketene (4-methylene-2-oxetanone)	674828
Dimethyl sulfate	77781
Dimethyl ether	115106
Dimethyl sulfide	75183
Dimethyl phthalate	131113
Dimethyl sulfoxide	67685
Dimethyl terephthalate	120616
Dimethylacetamide (N,N-)	127195
Dimethylamine	124403
Dimethylaminoethanol (2-)	108010
Dimethylaniline (N,N)	121697
Dimethylbenzidine (3,3′-)	119937
Dimethylformamide (N,N-)	68122
Dimethylhydrazine (1,1-)	57147
Dimethylphenol (2,5-) Xylenol (2, 5-)	95874
Dimethylphenol (2,6-) Xylenol (2, 6-)	576261
Dimethylphenol (3,5-) Xylenol (3, 5-)	108689
Dimethylphenol (2,4-) Xylenol (2, 4-)	105679
Dimethylphenol (2,3-) Xylenol (2, 3-)	526750
Dimethylphenol (3,4-) Xylenol (3, 4-)	95658
Dinitrobenzenes (NOS)[c]	25154545
Dinitrobenzoic acid (3,5-)	99343
Dinitrophenol (2,4-)	51285
Dinitrotoluene (3,4-)	610399
Dinitrotoluene (2,6-)	606202
Dinitrotoluene (2,3-)	602017
Dinitrotoluene (2,4-)	121142
Dioctyl phthalate	117817
Dioxane (1,4-) (1,4-Diethyleneoxide)	123911
Dioxolane (1,3-)	646060
Diphenyl oxide	101848
Diphenyl thiourea (N,N′-)	102089
Diphenyl methane	101815
Diphenylamine	122394
Dipropylene glycol	110985
Dodecandedioic acid	693232
Dodecene (branched)	112414
Dodecene (n-)	25378227
Dodecyl phenol (branched)	121158585
Dodecyl benzene (branched)	123013
Dodecylaniline	28675174
Dodecylbenzene sulfonic acid	27176870
Dodecylbenzene, nonlinear	
Dodecylbenzene (n-)	121013
Dodecylbenzene sulfonic acid, sodium salt	25155300
Dodecylmercaptan (branched)	25103586
Dodecylphenol	27193868
Epichlorohydrin (1-chloro-2,3-epoxypropane)	106898
Ethane	74840
Ethanol	64175
Ethanolamine	141435
Ethyl ether	60297
Ethyl oxalate	95921
Ethyl orthoformate	122510
Ethyl acetate	141786
Ethyl bromide	74964
Ethyl chloride (Chloroethane)	75003
Ethyl cyanide	107120
Ethyl acrylate	140885
Ethyl sodium oxalacetate	41892711
Ethyl acetoacetate	141979
Ethyl chloroacetate	105395
Ethyl mercaptan (ethanethiol)	75081
Ethylamine	75047
Ethylaniline (o-)	578541
Ethylaniline (n-)	103695
Ethylbenzene	100414
Ethylcellulose	9004573
Ethylcyanoacetate	105566
Ethylene glycol dibutyl ether	112481
Ethylene dibromide (Dibromoethane)	106934

TABLE 1 TO SUBPART YYY—LIST OF SOCMI CHEMICALS—Continued

Chemical name [a]	CAS No. [b]
Ethylene oxide	75218
Ethylene glycol monoethyl ether	110805
Ethylene glycol monoethyl ether acetate	111159
Ethylene glycol monomethyl ether	109864
Ethylene dichloride	107062
Ethylene glycol monobutyl ether acetate	112072
Ethylene glycol dimethyl ether	110714
Ethylene	74851
Ethylene glycol monophenyl ether	122996
Ethylene glycol monoacetate	542596
Ethylene carbonate	96491
Ethylene glycol monooctyl ether	
Ethylene glycol diacetate	111557
Ethylene glycol diethyl ether (1,2-diethoxyethane)	629141
Ethylene glycol monopropyl ether	2807309
Ethylene glycol monohexyl ether	112254
Ethylene glycol monomethyl ether acetate	110496
Ethylene glycol monobutyl ether	111762
Ethylene chlorohydrin	107073
Ethylene glycol	107211
Ethylenediamine	107153
Ethylenediamine tetraacetic acid	60004
Ethylenimine (Aziridine)	151564
Ethylhexanoic acid (2-)	149575
Ethylhexyl succinate (2-)	
Ethylhexyl acrylate (2-isomer)	103117
Ethylmethylbenzene	25550145
Fluoranthene	206440
Formaldehyde	50000
Formamide	75127
Formic acid	64186
Fumaric acid	110178
Furfural (2-furan carboxaldehyde)	98011
Glutaraldehyde	111308
Glyceraldehyde	367475
Glycerol dichlorohydrin	26545737
Glycerol tri(polyoxypropylene)ether	25791962
Glycerol	56815
Glycidol	556525
Glycine	56406
Glycol ethers	
Glyoxal (ethane dial)	107222
Guanidine	
Guanidine nitrate	506934
Heptenes	
Hexachlorobenzene	118741
Hexachlorobutadiene	87683
Hexachlorocyclopentadiene	77474
Hexachloroethane	67721
Hexadecyl chloride	
Hexadecyl alcohol (1-hexadecanol)	36653824
Hexadiene (1,4-)	592450
Hexamethylene glycol	629118
Hexamethylene diamine adipate	3323533
Hexamethylenediamine	124094
Hexamethylenetetramine	100970
Hexane	110543
Hexanetriol (1,2,6-)	106694
Hexyl alcohol	111273
Hexylene glycol	107415
Higher glycols	
Hydrogen cyanide	74908
Hydroquinone	123319
Hydroxyadipaldehyde	141311
Hydroxybenzoic acid (p-)	99967
Iminodiethanol (2,2-) (diethanolamine)	111422
Isoamyl alcohol	123513
Isoamyl chloride (mixed)	
Isoamylene	26760645
Isobutane	75285
Isobutanol	78831
Isobutyl methacrylate	97869

TABLE 1 TO SUBPART YYY—LIST OF SOCMI CHEMICALS—Continued

Chemical name [a]	CAS No. [b]
Isobutyl acetate	110190
Isobutyl acrylate	106638
Isobutyl vinyl ether	109535
Isobutyl alcohol	78831
Isobutylene	115117
Isobutyraldehyde (2-methyl-propanal)	78842
Isobutyric acid	79312
Isodecanol	25339177
Isohexyldecyl alcohol	
Isononyl alcohol	
Isooctyl alcohol	26952216
Isopentane	78784
Isophorone nitrile	
Isophorone	78591
Isophthalic acid	121915
Isoprene	78795
Isopropanol	67630
Isopropyl acetate	108214
Isopropyl ether	108203
Isopropyl chloride	75296
Isopropylamine	75310
Isopropylphenol	25168063
Ketene	463514
Lactic acid	79334
Lauryl dimethylamine oxide	
Lead subacetate	1335326
Lead phthalate	
Lead acetate	6080564
Linear alcohols, ethoxylated and sulfated, sodium salt, mixed	
Linear alcohols, ethoxylated, mixed	
Linear alkyl sulfonate	
Linear alcohols, sulfated, sodium salt, mixed	
Magnesium acetate	142723
Maleic anhydride	108316
Maleic hydrazide	123331
Maleic acid	110167
Malic acid	6915157
Manganese acetate	638380
Melamine (1,3,5-triazine-2,4,6-triamine)	108781
Mercuric acetate	1600277
Mesityl oxide	141797
Metanilic acid	121471
Methacrylic acid	79414
Methacrylonitrile	126987
Methallyl chloride	563473
Methallyl alcohol	513428
Methane	74828
Methanol	67561
Methionine	63683
Methyl mercaptan	74931
Methyl iodide	74884
Methyl ethyl ketone (2-butanone)	78933
Methyl isobutyl carbinol	108112
Methyl acetate	79209
Methyl chloride (Chloromethane)	74873
Methyl salicylate	119368
Methyl acetoacetate	105453
Methyl bromide (Bromomethane)	74839
Methyl formate	107313
Methyl phenyl carbinol	98851
Methyl methacrylate	80626
Methyl tert-butyl ether	1634044
Methyl isocyanate	624839
Methyl butynol	37365712
Methyl hydrazine	60344
Methyl isobutyl ketone (Hexone)	108101
Methyl acrylate	96333
Methyl butenols	
Methyl anthranilate	134203
Methylamine	74895
Methylaniline (N-)	100618
Methylbutanol (2-)	137326

TABLE 1 TO SUBPART YYY—LIST OF SOCMI CHEMICALS—Continued

Chemical name [a]	CAS No. [b]
Methylcyclohexane	108872
Methylcyclohexanol	25639423
Methylcyclohexanone	1331222
Methylene chloride (Dichloromethane)	75092
Methylene dianiline (4,4′)	101779
Methylene diphenyl diisocyanate (4,4′-) (MDI)	101688
Methylionones (a-)	79696
Methylnaphthalene (2-)	91576
Methylnaphthalene (1-)	90120
Methylpentane (2-)	107835
Methylpentynol	77758
Methylstyrene (a-)	98839
Monomethylhydrazine	
Morpholine	110918
n-Heptane	142825
n-Propanol	71238
N-Vinyl-2-pyrrolidine	
Naphthalene sulfonic acid (a-)	85472
Naphthalene	91203
Naphthalene sulfonic acid (b-)	120183
Naphthenic acids	
Naphthol (a-)	90153
Naphthol (b-)	135193
Naphtholsulfonic acid (1-)	567180
Naphthylamine sulfonic acid (1,4-)	84866
Naphthylamine (1-)	134327
Naphthylamine (2-)	91598
Naphthylamine sulfonic acid (2,1-)	81163
Neohexane	75832
Neopentanoic acid	75989
Neopentyl glycol	126307
Nickel formate	
Nitriloacetic acid	
Nitrilotriacetic acid	139139
Nitroaniline (m-)	99092
Nitroaniline (p-)	100016
Nitroaniline (o-)	88744
Nitroanisole (p-)	100174
Nitroanisole (o-)	91236
Nitrobenzene	98953
Nitrobenzoic acid (m-)	121926
Nitrobenzoic acid (o-)	552169
Nitrobenzoic acid (p-)	62237
Nitrobenzoyl chloride (p-)	
Nitroethane	79243
Nitroguanidine	556887
Nitromethane	75525
Nitronaphthalene (1-)	86577
Nitrophenol (p-)	100027
Nitrophenol (o-)	88755
Nitropropane (1-)	25322014
Nitropropane (2-)	79469
Nitrotoluene (p-)	99990
Nitrotoluene (o-)	88722
Nitrotoluene (m-)	99081
Nitrotoluene (all isomers)	1321126
Nitroxylene	25168041
Nonene	27215958
Nonyl alcohol	1430808
Nonylbenzene (branched)	1081772
Nonylphenol	25154523
Nonylphenol, ethoxylated	9016459
Nonylphenol (branched)	25154523
Octane	111659
Octene-1	111660
Octylamine (tert-)	107459
Octylphenol	27193288
Oil-soluble petroleum sulfonate sodium salt	
Oil-soluble petroleum sulfonate calcium salt	
Oxalic acid	144627
Oxamide	471465
Oxo chemicals	

TABLE 1 TO SUBPART YYY—LIST OF SOCMI CHEMICALS—Continued

Chemical name [a]	CAS No.[b]
p-tert-Butyl toluene	98511
Paraformaldehyde	30525894
Paraldehyde	123637
Pentachlorophenol	87865
Pentaerythritol tetranitrate	
Pentane	109660
Pentanethiol	115775
Pentanol (3-)	584021
Pentanol (2-)	6032297
Pentene (1-)	109671
Pentene (2-)	109682
Peracetic acid	79210
Perchloromethyl mercaptan	594423
Phenacetin	62442
Phenanthrene	85018
Phenetidine (p-)	156434
Phenetidine (o-)	94702
Phenol	108952
Phenolphthalein	77098
Phenolsulfonic acids (all isomers)	1333397
Phenyl anthranilic acid (all isomers)	91407
Phenylenediamine (m-)	108452
Phenylenediamine (p-)	106503
Phenylenediamine (o-)	95545
Phenylmethylpyrazolone	
Phenylpropane	103651
Phloroglucinol (1,3,5-benzenetriol)	108736
Phosgene	75445
Phthalic acid	88993
Phthalic anhydride	85449
Phthalimide	85416
Phthalonitrile	91156
Picoline (b-)	108996
Picoline (a-)	
Picramic acid	
Picric acid	88891
Piperazine	110850
Piperidine	110894
Piperylene	504609
Polybutenes	9003296
Polyethylene glycol	25322683
Polypropylene glycol	25322694
Potassium acetate	127082
Propane	74986
Propiolactone (beta-) (2-Oxetanone)	57578
Propionaldehyde	123386
Propionic acid	79094
Propyl acetate (n-)	109604
Propyl chloride	540545
Propyl alcohol (n-)	71238
Propylamine	107108
Propylene chlorohydrin	127004
Propylene glycol	57556
Propylene	115071
Propylene oxide	75569
Propylene carbonate	108327
Propylene glycol monomethyl ether	107982
1,2-dichloropropane	78875
Pseudocumene	95636
Pseudocumidine	
Pyrene	129000
Pyridine	110861
Pyrrolidone (2-)	616455
Quinone	106514
Resorcinol (1,3-benzenediol)	108463
Salicylic acid	69727
Sebacic acid	111206
Sodium benzoate	532321
Sodium phenate	139026
Sodium acetate	127093
Sodium formate	141537
Sodium methoxide	124414

TABLE 1 TO SUBPART YYY—LIST OF SOCMI CHEMICALS—Continued

Chemical name [a]	CAS No. [b]
Sodium cyanide	143339
Sodium propionate	137406
Sodium chloroacetate	3926623
Sodium carboxymethyl cellulose	9004324
Sodium oxalate	62760
Sodium dodecyl benzene sulfonate	
Sorbic acid	110441
Sorbitol (D-Glucitol)	50704
Stilbene	588590
Styrene	100425
Succinic acid	110156
Succinonitrile	110612
Sulfanilic acid	121573
Sulfolane	126330
Synthesis gas	
Tannic acid	1401554
Tartaric acid	526830
Terephthalic acid	100210
Terephthaloyl chloride	100209
Tetra (methyl-ethyl) lead	
Tetrabromophthalic anhydride	632791
Tetrachlorobenzene (1,2,3,5-)	
Tetrachlorobenzene (1,2,4,5-)	95943
Tetrachloroethane (1,1,2,2-)	79345
Tetrachloroethylene (Perchloroethylene)	127184
Tetrachlorophthalic anhydride	117088
Tetraethyl lead	78002
Tetraethylene glycol	112607
Tetraethylenepentamine	112572
Tetrafluoroethylene	
Tetrahydrofuran	109999
Tetrahydronapthalene	119642
Tetrahydrophthalic anhydride	85438
Tetramethylenediamine	110601
Tetramethylethylenediamine	110189
Tetramethyllead	75741
Thiourea	62566
Tolidines	
Toluene sulfonic acids	104154
Toluene diisocyanate (2,4-)	584849
Toluene	108883
Toluene diamine (2,4-)	95807
Toluene diisocyanates (mixture)	26471625
Toluene sulfonamides (o- and p-)	1333079
Toluenesulfonyl chloride	98599
Toluidine (o-)	95534
Trichloroacetic acid	76039
Trichloroaniline (2,4,6-)	634935
Trichlorobenzene (1,2,4-)	120821
Trichlorobenzene (1,2,3-)	87616
Trichlorobenzene (1,3,5-)	108703
Trichloroethane (1,1,2-)	79005
Trichloroethane (1,1,1-)	71556
Trichloroethylene	79016
Trichlorofluoromethane	75694
Trichlorophenol (2,4,5-)	95954
Trichloropropane (1,2,3-)	96184
Tricresyl phosphate	1330785
Tridecyl alcohol	112709
Tridecyl mercaptan	
Triethanolamine	102716
Triethylamine	121448
Triethylene glycol monoethyl ether	112505
Triethylene glycol	112276
Triethylene glycol dimethyl ether	112492
Triethylene glycol monomethyl ether	112356
Triisobutylene	7756947
Trimellitic anhydride	552307
Trimethyl-1,3-pentanediol (2,2,4-)	144194
Trimethyl-1-pentanol (2,4,4-)	16325636
Trimethylamine	75503
Trimethylcyclohexanol	933482

TABLE 1 TO SUBPART YYY—LIST OF SOCMI CHEMICALS—Continued

Chemical name [a]	CAS No.[b]
Trimethylcyclohexanone	2408379
Trimethylcyclohexylamine	34216347
Trimethylolpropane	77996
Trimethylpentane (2,2,4-)	540841
Tripropylene glycol	24800440
Urea	57136
Vinyl chloride (Chloroethylene)	75014
Vinyl acetate	108054
Vinyl toluene	25013154
Vinyl (N-)-pyrrolidone (2-)	88120
Vinylcyclohexene (4-)	100403
Vinylidene chloride (1,1-dichloroethylene)	75354
Vinylpyridine (2-)	100696
Xanthates	140896
Xylene sulfonic acid	25321419
Xylene (m-)	108383
Xylene (o-)	95476
Xylene (p-)	106423
Xylenes (NOS)[c]	1330207
Xylenols (Mixed)	1300716
Xylidene (dimethylbenzene diamine)	1300738
Xylidene (2,3-)	1300738
Xylidene (2,6-)	1300738
Xylidene (2,5-)	1300738
Xylidene (3,5-)	1300738
Xylidene (2,4-)	1300738
Xylidene (3,4-)	1300738
Zinc acetate	5970456

[a] Isomer means all structural arrangements for the same number of atoms of each element and does not mean salts, esters, or derivatives.
[b] CAS Number = Chemical Abstract Service number.

TABLE 2 TO SUBPART YYY—APPLICABILITY OF 40 CFR PART 60 GENERAL PROVISIONS TO SUBPART YYY

Reference	Applies to subpart YYY	Subject/comment
60.1	Yes	Applicability.
60.2	Yes	Definitions. If a term is defined in both the General Provisions and subpart YYY, the definition in YYY shall override the definition in the General provisions.
60.3	Yes	Units and abbreviations.
60.4	Yes	Address.
60.5	Yes	Determination of construction or modification.
60.6	Yes	Review of plans.
60.7(a)(1)	Yes	Submit a notification of the date construction or reconstruction commences.
60.7(a)(2)	Yes	Submit a notification of anticipated date of initial startup.
60.7(a)(3)	Yes	Submit a notification of actual date of initial startup.
60.7(a)(4)	Yes	Submit a notification of any physical or operational change to an existing facility which increases the emission rate of any air pollutant.
60.7(a)(5)	No	Continuous monitoring requirements and associated reporting and recordkeeping are specified in §§ 60.781, 60.784, and 60.785 of subpart YYY.
60.7(a)(6)–160.7(a)(7)	No	Subpart YYY is not an opacity standard.
60.7(b)	No	§ 60.785(f)(7) of subpart YYY specify which records to maintain to document periods of startup, shutdown, or malfunction; and periods when a continuous monitoring system is inoperative.
60.7(c), (d), and (e)	No	The semiannual report required in § 60.784(d) includes reports of all excursions and all periods when monitoring parameters are above the maximum or below the minimum established value. § 60.784(e) specifies semiannual reporting for treatment processes. Excess emissions are discussed and defined in § 60.787(a)(3) and must be recorded in the startup, shutdown, and malfunction plan as specified in § 60.787.
60.7(f)	No	§ 60.785 specifies data retention and the types of records that must be maintained.
60.7(g)–(h)	Yes	
60.8	No	The performance testing requirements in 40 CFR 63.7 apply to subpart YYY as specified in Table 2A of this subpart.
60.9	Yes	Availability of information.
60.10	Yes	State authority.
60.11	No	Subpart YYY is not an opacity standard. Operation and maintenance requirements are specified throughout subpart YYY.
60.12	Yes	Circumvention.
60.13(a)	No	Continuous monitoring requirements are specified in § 60.781.
60.13(b)	Yes	Except use 40 CFR part 63.11 in place of the § 60.8 reference to performance tests.

TABLE 2 TO SUBPART YYY—APPLICABILITY OF 40 CFR PART 60 GENERAL PROVISIONS TO SUBPART YYY—Continued

Reference	Applies to subpart YYY	Subject/comment
60.13(c)–(d)	No	Opacity and continuous emission monitoring not required in subpart YYY.
60.13(e)	No	Monitoring frequency is specified in § 60.781.
60.13(f)	Yes	Except § 60.781(g), which pertains to installation, calibration, and maintenance of monitoring equipment, applies, also.
60.13(g)	No	The locations to install CMS are specified in § 60.781.
60.13(h)	No	Provisions explaining how to calculate continuous parameter monitoring values are specified in § 60.785.
60.13(i)(1)–(i)(7), (i)(9)	Yes	Alternatives to monitoring methods or procedures must be approved by the Administrator.
60.13(i)(8)	No	Opacity monitoring not required in subpart YYY.
60.13(j)	No	Continuous emission monitoring not required in subpart YYY.
60.14(a)	No	A modification is determined as specified in § 60.772(b).
60.14(b)	No	VOC emissions are determined as specified in § 60.772(f).
60.14(c)	No	
60.14(d)	No	Reserved.
60.14(e)	No	Types of physical and operational changes that are not modifications are specified in § 60.772(c).
60.14(f)–(g)	Yes	
60.14(h)–60.14(l)	Yes	List of changes and projects that are exempt from modification provisions.
60.15	Yes	Except 60.772(g) specifies additional requirements for ''fixed capital cost of the new components.''
60.16	Yes	Prioritized major source categories.
60.17	Yes	Incorporations by reference.
60.18	No	Control device requirements are specified in 40 CFR part 63.11, as specified in Table 2A of this subpart.
60.19	Yes	General notification and reporting requirements.

TABLE 2A TO SUBPART YYY—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART YYY

Reference	Applies to subpart YYY	Subject/comment
63.6(e)(3)(i)	Yes	The startup, shutdown, malfunction plan may include written procedures that identify conditions that justify a delay of repair.
63.6(e)(3)(i)(B)	Yes	
63.6(e)(3)(i)(C)	Yes	
63.6(e)(3)(ii)	Yes	
63.6(e)(3)(v)	Yes	
63.6(e)(3)(vi)	Yes	
63.6(e)(3)(vii)	Yes	
63.6(e)(3)(vii)(A)	Yes	
63.6(e)(3)(vii)(B)	Yes	Except the plan shall provide for operation in compliance with § 60.787(a)(3).
63.6(e)(3)(vii)(C)	Yes	
63.6(e)(3)(viii)	Yes	
63.7(a)(3)	Yes	
63.7(d)	Yes	
63.7(e)(1)–(e)(2)	Yes	Except § 60.783(a)(8), representative process unit operating conditions, and (a)(9), representative treatment process or control device operating conditions, also address this issue.
63.7(e)(4)	Yes	
63.7(h)(1)–(h)(2)	Yes	
63.7(h)(5)	Yes	
63.9(a)(4)	Yes	
63.9(b)(5)	Yes	
63.11	Yes	

TABLE 3 TO SUBPART YYY—CONTROL REQUIREMENT OPTIONS FOR WASTEWATER TANKS, SURFACE IMPOUNDMENT, CONTAINERS, INDIVIDUAL DRAIN SYSTEMS, AND OIL-WATER SEPARATORS

Unit operation	Part 63, subpart G (HON)	Part 63 (standard-standards)	Part 60, subpart QQQ (petroleum refinery)	Part 264, subpart CC (RCRA CC)	Part 265, subpart CC (RCRA CC)	Part 61, subpart FF (benzene waste)
Wastewater Tanks	§ 63.133			§ 264.1084	§ 265.1085	§ 61.343
Surface Impoundments	§ 63.134	§§ 63.942 and 63.943 of Subpart QQ.		§ 264.1085	§ 265.1086	§ 61.344

TABLE 3 TO SUBPART YYY—CONTROL REQUIREMENT OPTIONS FOR WASTEWATER TANKS, SURFACE IMPOUNDMENT, CONTAINERS, INDIVIDUAL DRAIN SYSTEMS, AND OIL-WATER SEPARATORS—Continued

Unit operation	Part 63, subpart G (HON)	Part 63 (standard-standards)	Part 60, subpart QQQ (petroleum refinery)	Part 264, subpart CC (RCRA CC)	Part 265, subpart CC (RCRA CC)	Part 61, subpart FF (benzene waste)
Containers	§ 63.135	§§ 63.922 and 63.923 of Subpart PP.		§ 264.1086	§ 265.1087	§ 61.345
Individual Drain System	§ 63.136	§ 63.962 of Subpart RR.	§ 60.693–1			§ 61.346
Oil-water separators	§ 63.137	§§ 63.1042, 63.1043, and 63.1044 of Subpart VV.				§ 61.347

TABLE 4 TO SUBPART YYY—WASTEWATER TANKS REQUIRING CONTROLS AND CONTROL REQUIREMENTS

Capacity (m^3)	Vapor pressure (kPa)	Control requirements
<75		FR, IFR, EFR, or CVS and CD.
≥75 and <151	<13.1	FR, IFR, EFR, or CVS and CD.
	≥13.1	IFR, EFR, or CVS and CD.
≥151	<5.2	FR, IFR, EFR, or CVS and CD.
	≥5.2	IFR, EFR, or CVS and CD.

FR means fixed roof requirements in the applicable compliance option.
IFR means internal floating roof requirements in the applicable compliance option.
EFR means external floating roof requirements in the applicable compliance option.
CVS and CD means closed vent system routed to a control device requirements in the applicable compliance option.

TABLE 5 TO SUBPART YYY—COMPLIANCE OPTIONS FOR WASTEWATER TANKS, SURFACE IMPOUNDMENTS, CONTAINERS, INDIVIDUAL DRAIN SYSTEMS, AND OIL-WATER SEPARATORS

Headings within § 60.774	Part 63, subpart G (HON)	Part 63 (standard-standards)	Part 60, subpart QQQ (petroleum refinery)	Part 264, subpart CC (RCRA CC)	Part 265, subpart CC (RCRA CC)	Part 61, subpart FF (benzene waste)
Control Requirements.	If WMU subject to YYY or HON, then comply with HON control requirements.	Comply with subpart QQ, PP, RR, or VV control requirements, as applicable.	If WMU subject to YYY or Petroleum Refinery for individual drain systems, then comply with Petroleum Refinery control requirements.	If WMU subject to YYY and RCRA, part 264, then comply with RCRA, part 264 control requirements.	If WMU subject to YYY and RCRA, part 265, then comply with RCRA, part 265 control requirements.	If WMU subject to YYY and Benzene Waste, then comply with Benzene Waste control requirements.
Monitoring	If WMU subject to HON, can comply with either HON or YYY provisions; if WMU not subject to HON, comply with YYY provisions.	Comply with std-stds provisions or YYY provisions.	If WMU subject to Petroleum Refinery, then can comply with either Petroleum Refinery or YYY provisions; if WMU not subject to Petroleum Refinery, comply with YYY provisions.	If WMU subject to part RCRA, part 264, then can comply with either RCRA, part 264 or YYY provisions; if WMU not subject to RCRA, part 264, comply with YYY provisions.	If WMU subject to RCRA, part 265, then can comply with either RCRA, part 265 or YYY provisions; if WMU not subject to RCRA, part 265, comply with YYY provisions.	If WMU subject to Benzene Waste, then can comply with either Benzene Waste or YYY provisions; if WMU not subject to Benzene Waste, comply with YYY provisions.
Reporting	If WMU subject to HON, can comply with either HON or YYY provisions; if WMU not subject to HON, comply with YYY provisions.	Comply with std-stds provisions or YYY provisions *.	If WMU subject to Petroleum Refinery, then can comply with either Petroleum Refinery or YYY provisions; if WMU not subject to Petroleum Refinery, comply with YYY provisions.	If WMU subject to RCRA, part 264, then can comply with either RCRA, part 264 or YYY provisions; if WMU not subject to RCRA, part 264, comply with YYY provisions.	If WMU subject to RCRA, part 265, then can comply with either RCRA, part 265 or YYY provisions; if WMU not subject to RCRA, part 265, comply with YYY provisions **.	If WMU subject to Benzene Waste, then can comply with either Benzene Waste or YYY provisions; if WMU not subject to Benzene Waste, comply with YYY provisions.

TABLE 5 TO SUBPART YYY—COMPLIANCE OPTIONS FOR WASTEWATER TANKS, SURFACE IMPOUNDMENTS, CONTAINERS, INDIVIDUAL DRAIN SYSTEMS, AND OIL-WATER SEPARATORS—Continued

Headings within § 60.774	Part 63, subpart G (HON)	Part 63 (standard-standards)	Part 60, subpart QQQ (petroleum refinery)	Part 264, subpart CC (RCRA CC)	Part 265, subpart CC (RCRA CC)	Part 61, subpart FF (benzene waste)
Recordkeeping	If WMU subject to HON, can comply with either HON or YYY provisions; if WMU not subject to HON, comply with YYY provisions.	Comply with std-stds provisions or YYY provisions *.	If WMU subject to Petroleum Refinery, then can comply with either Petroleum Refinery or YYY provisions; if WMU not subject to Petroleum Refinery, comply with YYY provisions.	If WMU subject to RCRA, part 264, then can comply with either RCRA, part 264 or YYY provisions; if WMU not subject to RCRA, part 264, comply with YYY provisions.	If WMU subject to RCRA, part 265, then can comply with either RCRA, part 265 or YYY provisions; if WMU not subject to RCRA, part 265, comply with YYY provisions.	If WMU subject to Benzene Waste, then can comply with either Benzene Waste or YYY provisions; if WMU not subject to Benzene Waste, comply with YYY provisions.
Leak Detection	If WMU subject to HON, can comply with either HON or YYY provisions; if WMU not subject to HON, comply with YYY provisions.	Comply with std-stds provisions or YYY provisions.	If WMU subject to Petroleum Refinery, then can comply with either Petroleum Refinery or YYY provisions; if WMU not subject to Petroleum Refinery, comply with YYY provisions.	If WMU subject to RCRA, part 264, then can comply with either RCRA, part 264 or YYY provisions; if WMU not subject to RCRA, part 264, comply with YYY provisions.	If WMU subject to RCRA, part 265, then can comply with either RCRA, part 265 or YYY provisions; if WMU not subject to RCRA, part 265, comply with YYY provisions.	If WMU subject to Benzene Waste, then can comply with either Benzene Waste or YYY provisions; if WMU not subject to Benzene Waste, comply with YYY provisions.
Delay of repair	If WMU subject to HON, can comply with either HON or YYY provisions; if WMU not subject to HON, comply with YYY provisions.	Comply with std-stds provisions or YYY provisions.	If WMU subject to Petroleum Refinery, then can comply with either Petroleum Refinery or YYY provisions; if WMU not subject to Petroleum Refinery, comply with YYY provisions.	If WMU subject to RCRA, part 264, then can comply with either RCRA, part 264 or YYY provisions; if WMU not subject to RCRA, part 264, comply with YYY provisions.	If WMU subject to RCRA, part 265, then can comply with either RCRA, part 265 or YYY provisions; if WMU not subject to RCRA, part 265, comply with YYY provisions.	If WMU subject to Benzene Waste, then can comply with either Benzene Waste or YYY provisions; if WMU not subject to Benzene Waste, comply with YYY provisions.
Control device	If WMU subject to HON, can comply with either HON or YYY provisions; if WMU not subject to HON, comply with YYY provisions.	Comply with YYY provisions.	If WMU subject to Petroleum Refinery, then can comply with either Petroleum Refinery or YYY provisions; if WMU not subject to Petroleum Refinery, comply with YYY provisions.	If WMU subject to part RCRA 264, then can comply with either RCRA part 264 or YYY provisions; if WMU not subject to RCRA part 264, comply with YYY provisions.	If WMU subject to RCRA, part 265, then can comply with either RCRA part 265 or YYY provisions; if WMU not subject to RCRA part 265, comply with YYY provisions.	If WMU subject to Benzene Waste, then can comply with either Benzene Waste or YYY provisions; if WMU not subject to Benzene Waste, comply with YYY provisions.

* The owner or operator shall comply with the recordkeeping and reporting provisions in §§ 60.784 and 60.785 of this subpart when complying with the provisions for containers in subpart PP.

** The owner or operator shall comply with the reporting provisions in § 60.784 of this subpart when complying with the provisions of RCRA, 40 CFR part 265.

TABLE 6 TO SUBPART YYY—CONTROL REQUIREMENTS FOR ITEMS OF EQUIPMENT THAT MEET THE CRITERIA OF § 60.775

Item of equipment	Control requirement [a]
Drain or drain hub	(a) Tight fitting solid cover (TFSC); or (b) TFSC with a vent to either a fuel gas system or to a control device meeting the requirements of § 60.780; or (c) Water seal with submerged discharge or barrier to protect discharge from wind.
Manhole [b]	(a) TFSC; or (b) TFSC with a vent to a control device meeting the requirements of § 60.780; or (c) If the item is vented to the atmosphere, use a TFSC with a properly operating water seal at the entrance or exit to the item to restrict ventilation in the collection system. The vent pipe shall be at least 90 cm in length and not exceeding 10.2 cm in diameter.
Lift station	(a) TFSC; or (b) TFSC with a vent to a control device meeting the requirements of § 60.780; or

TABLE 6 TO SUBPART YYY—CONTROL REQUIREMENTS FOR ITEMS OF EQUIPMENT THAT MEET THE CRITERIA OF § 60.775—Continued

Item of equipment	Control requirement [a]
	(c) If the lift station is vented to the atmosphere, use a TFSC with a properly operating water seal at the entrance or exit to the item to restrict ventilation in the collection system. The vent pipe shall be at least 90 cm in length and not exceeding 10.2 cm in nominal inside diameter. The lift station shall be level controlled to minimize changes in the liquid level.
Trench	(a) TFSC; or
	(b) TSFC with a vent to a control device meeting the requirements of § 60.780; or
	(c) If the item is vented to the atmosphere, use a TFSC with a properly operating water seal at the entrance or exit to the item to restrict ventilation in the collection system. The vent pipe shall be at least 90 cm in length and not exceeding 10.2 cm in nominal inside diameter.
Pipe	Each pipe shall have no visible gaps in joints, seals, or other emission interfaces.
Oil/Water separator	(a) Equip with a fixed roof and closed vent system that routes vapors to a control device meeting the requirements of § 60.780; or
	(b) Equip with a floating roof that meets the equipment specifications of § 60.693 (a)(1)(i), (a)(1)(ii), (a)(2), (a)(3), and (a)(4).
Tank [c]	Maintain a fixed roof [d]. If the tank is sparged [e] or used for heating or treating by means of an exothermic reaction, a fixed roof and a closed vent system shall be maintained that routes the VOC vapors to a control device that meets the requirements of § 60.780.

[a] Where a tight fitting solid cover (TFSC) is required, it shall be maintained with no visible gaps or openings, except during periods of sampling, inspection, or maintenance.
[b] Manhole includes sumps and other points of access to a conveyance system.
[c] Applies to tanks with capacities of 38 m^3 or greater.
[d] A fixed roof may have openings necessary for proper venting of the tank, such as pressure/vacuum vent, j-pipe vent.
[e] The liquid in the tank is agitated by injecting compressed air or gas.

TABLE 7 TO SUBPART YYY—MONITORING REQUIREMENTS FOR TREATMENT PROCESSES

To comply with	Parameters to be monitored	Frequency	Methods
1. Required mass removal of each organic treated in a properly operated biological treatment unit § 60.779.	Appropriate parameters as specified in § 60.781(c) and approved by the permitting authority.	Appropriate frequency as specified in § 60.781(c) and as approved by permitting authority.	Appropriate methods as specified in § 60.781(c) and as approved by permitting authority.
2. Design steam stripper § 60.779(d).	Steam flow rate	Continuously	Integrating steam flow monitoring device equipped with a continuous recorder.
	Wastewater feed mass flow rate	Continuously	Liquid flow meter installed at stripper influent and equipped with a continuous recorder.
	Wastewater feed temperature	Continuously	Liquid temperature monitoring device installed at stripper influent and equipped with a continuous recorder.
3. Alternative monitoring parameters.	Other parameters may be monitored upon approval from the Administrator in accordance with the requirements specified in § 60.781(d).		

TABLE 8 TO SUBPART YYY—MONITORING REQUIREMENTS FOR CONTROL DEVICES

Control device	Monitoring equipment required	Parameters to be monitored	Frequency
All control devices	1. Flow indicator installed at all bypass lines to the atmosphere and equipped with continuous recorder [b] *or.*	1. Diversion to the atmosphere from the control device *or.*	Hourly records of whether the flow indicator was operating and whether a diversion was detected at any time during each hour. Record and report the times of all periods when emissions are diverted through a bypass line or the flow indicator is not operating.
	2. Valves sealed closed with car-seal or lock-and-key configuration.	2. Monthly inspections of sealed valves	Monthly.
Thermal Incinerator	Temperature monitoring device installed in firebox or in ductwork immediately downstream of firebox [a] and equipped with a continuous recorder [b].	Firebox temperature	Continuous.

TABLE 8 TO SUBPART YYY—MONITORING REQUIREMENTS FOR CONTROL DEVICES—Continued

Control device	Monitoring equipment required	Parameters to be monitored	Frequency
Catalytic Incinerator	Temperature monitoring device installed in gas stream immediately before and after catalyst bed and equipped with a continuous recorder [b].	1. Temperature upstream and downstream of catalyst bed. 2. Temperature difference across catalyst bed.	Continuous.
Flare	Heat sensing device installed at the pilot light and equipped with a continuous recorder [b].	Presence of a flame at the pilot light	Hourly records of whether the monitor was continuously operating and whether the pilot flame was continuously present during each hour.
Boiler or process heater <44 megawatts and vent stream is not mixed with the primary fuel.	Temperature monitoring device installed in firebox [a] and equipped with continuous recorder [b].	Combustion temperature	Continuous.
Condenser	Temperature monitoring device installed at condenser exit and equipped with continuous recorder [b].	Condenser exit (product side) temperature.	Continuous.
Carbon Adsorber (Regenerative).	Integrating regeneration stream flow monitoring device having an accuracy of ±10 percent, *and*. Carbon bed temperature monitoring device.	1. Total regeneration stream mass or volumetric flow during carbon bed regeneration cycle(s). 2. Temperature of carbon bed after regeneration [and within 15 minutes of completing any cooling cycle(s)].	For each regeneration cycle, record the total regeneration stream mass or volumetric flow. For each regeneration cycle and within 15 minutes of completing any cooling cycle, record the carbon bed temperature.
Carbon Adsorber (Non-regenerative).	Organic compound concentration monitoring device [c].	Organic compound concentration of adsorber exhaust.	Daily or at intervals no greater than 20 percent of the design carbon replacement interval, whichever is greater.
Alternative monitoring parameters.	Other parameters may be monitored upon approval from the Administrator in accordance with the requirements in § 60.781(e)(3).		

[a] Monitor may be installed in the firebox or in the ductwork immediately downstream of the firebox before any substantial heat exchange is encountered.
[b] "Continuous recorder" is defined in § 60.771 of this subpart.
[c] As an alternative to conducting this monitoring, an owner or operator may replace the carbon in the carbon adsorption system with fresh carbon at a regular predetermined time interval that is less than the carbon replacement interval that is determined by the maximum design flow rate and organic concentration in the gas stream vented to the carbon adsorption system.

TABLE 9 TO SUBPART YYY—INFORMATION ON PROCESS WASTEWATER STREAMS TO BE SUBMITTED WITH NOTIFICATION OF COMPLIANCE STATUS [a, b]

Process unit identification code [c]	Stream identification code	VOC concentration (ppmw) [d, e]	Flow rate (lpm) [e, f]	Group 1 or Group 2 [g]	Compliance approach [h]	Treatment process(es) identification [i]	Waste management unit(s) identification	Intended control device

[a] The information specified in this table 9 must be submitted; however, it may be submitted in any format. This table 9 presents an example format.
[b] Other requirements for the Notification of Compliance Status are specified in § 60.784(c).
[c] Also include a description of the process unit (e.g., benzene process unit).
[d] Except when § 60.773(c) is used, annual average concentration as specified in § 60.773(b) and § 60.782.
[e] When § 60.773(c) is used, indicate the wastewater stream is a designated Group 1 wastewater stream.
[f] Except when § 60.773(c) is used, annual average flowrate as specified in § 60.773(b) and § 60.782.
[g] Indicate whether stream is Group 1 or Group 2.
[h] Cite § 60.779 compliance option used.
[i] Identification codes should correspond to those listed in Table 10 of this subpart.

TABLE 10 TO SUBPART YYY—INFORMATION FOR TREATMENT PROCESSES TO BE SUBMITTED WITH NOTIFICATION OF COMPLIANCE STATUS [a,b]

Treatment process identification [c]	Description [d]	Wastewater stream(s) treated [e]	Monitoring parameters [f]

[a] The information specified in this table 10 must be submitted; however, it may be submitted in any format. This table 10 presents an example format.
[b] Other requirements for the Notification of Compliance Status are specified in § 60.784(c) of this subpart.
[c] Identification codes should correspond to those listed in Table 9 of this subpart.
[d] Description of treatment process (e.g., steam stripper).
[e] Stream identification code for each wastewater stream treated by each treatment unit. Identification codes should correspond to entries listed in Table 9 of this subpart.
[f] Parameter(s) to be monitored or measured in accordance with Table 7 and § 60.781 of this subpart.

TABLE 11 TO SUBPART YYY—INFORMATION FOR WASTE MANAGEMENT UNITS TO BE SUBMITTED WITH NOTIFICATION OF COMPLIANCE STATUS [a, b]

Waste management unit Identification [c]	Description [d]	Wastewater stream(s) received or managed [e]

[a] The information specified in this table 11 must be submitted; however, it may be submitted in any format. This table 11 presents an example format.
[b] Other requirements for the Notification of Compliance Status are specified in § 60.784(c) of this subpart.
[c] Identification codes should correspond to those listed in Table 9 of this subpart.
[d] Description of waste management unit.
[e] Stream identification code for each wastewater stream received or managed by each waste management unit. Identification codes should correspond to entries listed in Table 9 of this subpart.

TABLE 12 TO SUBPART YYY—INFORMATION ON RESIDUALS TO BE SUBMITTED WITH NOTIFICATION OF COMPLIANCE STATUS [a, b]

Residual identification [c]	Residual description [d]	Wastewater stream identification [e]	Treatment process [f]	Fate [g]	Control device identification code	Control device description [h]	Control device efficiency [i]

[a] The information specified in this table 12 must be submitted; however, it may be submitted in any format. This table 12 presents an example format.
[b] Other requirements for the Notification of Compliance Status are specified in § 60.784(c) of this subpart.
[c] Name or identification code of residual removed from Group 1 wastewater stream.
[d] Description of residual (e.g., steam stripper A–13 overhead condensates).
[e] Identification of stream from which residual is removed.
[f] Treatment process from which residual originates.
[g] Indicate whether residual is sold, returned to production process, or returned to waste management unit or treatment process; or whether VOC mass of residual is destroyed by 99 percent.
[h] If the fate of the residual is such that the VOC mass is destroyed by 99 percent, give description of device used for VOC destruction.
[i] The fate of the residual is such that the VOC mass is destroyed by 99 percent, provide an estimate of control device efficiency and attach substantiation in accordance with § 60.784(c)(5) of this subpart.

TABLE 13 TO SUBPART YYY—SEMIANNUAL REPORTING REQUIREMENTS FOR CONTROL DEVICES [§ 60.784(F)]

Control Device	Reporting Requirements
Thermal Incinerator	1. Report all daily average [a] temperatures that are above the maximum or below the minimum operating parameter value established in the NCS [b] or operating permit and all operating days when insufficient monitoring data are collected. [c]
Catalytic Incinerator	1. Report all daily average [a] upstream temperatures that are above the maximum or below the minimum operating parameter value established in the NCS [b] or operating permit.

TABLE 13 TO SUBPART YYY—SEMIANNUAL REPORTING REQUIREMENTS FOR CONTROL DEVICES [§ 60.784(F)]—Continued

Control Device	Reporting Requirements
	2. Report all daily average [a] temperature differences across the catalyst bed that are above the maximum or below the minimum operating parameter value established in the NCS [b] or operating permit. 3. Report all operating days when insufficient monitoring data are collected. [c]
Boiler or Process Heater with a design heat input capacity less than 44 megawatts and vent stream is not mixed with the primary fuel.	1. Report all daily average [a] firebox temperatures that are above the maximum or below the minimum operating parameter value established in the NCS [b] or operating permit and all operating days when insufficient monitoring data are collected. [c]
Flare	1. Report the duration of all periods when all pilot flames are absent.
Condenser	1. Report all daily average [a] exit temperatures that are above the maximum or below the minimum operating parameter value established in the NCS [b] or operating permit and all operating days when insufficient monitoring data are collected. [c]
Carbon Adsorber	1. Report all carbon bed regeneration cycles when the total regeneration stream mass or volumetric flow is above the maximum or below the minimum operating parameter value established in the NCS [b] or operating permit. 2. Report all carbon bed regeneration cycles during which the temperature of the carbon bed after regeneration is above the maximum or below the minimum operating parameter value established in the NCS [b] or operating permit. 3. Report all operating days when insufficient monitoring data are collected. [c]
All Control Devices	1. Report the times and durations of all periods when the vent stream is diverted through a bypass line or the monitor is not operating, or 2. Report all monthly inspections that show the valves are moved to the diverting position or the seal has been changed.

[a] The daily average is the average of all values recorded during the operating day, as specified in § 60.785(e) of this subpart.
[b] NCS = Notification of Compliance Status described in § 60.784(c) of this subpart.
[c] The semiannual reports shall include the duration of periods when monitoring data are not collected for each excursion as defined in § 60.784(d)(3) of this subpart.

TABLE 14 TO SUBPART YYY—COMPOUND AND DEFAULT BIORATES USED FOR COMPLIANCE DEMONSTRATIONS FOR ENHANCED BIOLOGICAL TREATMENT PROCESSES (SEE § 60.783(H))

Compound name	Biorate, K1 L/g MLVSS-hr
Acetonitrile	0.100
Acetophenone	0.538
Acrylonitrile	0.750
Biphenyl	5.643
Chlorobenzene	10.000
Dichloroethyl Ether (bis (2-chloroethyl ether)	0.246
Diethyl Sulfate	.0105
Dimethyl Hydrazine (1,1-)	0.227
Dimethyl Sulfate	0.178
Dinitrophenol (2,4-)	0.620
Dinitrotoluene (2,4-)	0.784
Dioxane (1,4-) (1,4-diethylene oxide)	0.393
Ethylene Glycol Dimethyl Ether	0.364
Ethylene Glycol Monobutyl Ether Acetate	0.496
Ethylene Glycol Monomethyl Ether Acetate	0.159
Hexachlorobenzene	16.179
Isophorone	0.598
Methanol	0.200
Methyl Methacrylate	4.300
Nitrobenzene	2.300
Toluidine (-o)	0.859
Trichlorobenzene (1,2,4-)	4.393
Trichlorophenol (2,4,5-)	4.477
Triethylamine	1.064

3. Part 60 is amended by adding appendix J to read as follows:

Appendix J to Part 60—How to Determine Henry's Law Constants, Fm Values, Fr Values, and Fe Values for Organic Compounds

1. *Use of Appendix and General Information.* This appendix has four sections. Section 2 contains the procedures for determining Henry's law constants, fraction measured (Fm) values, fraction removed values (Fr), and fraction emitted (Fe) values for an individual chemical. Section 3 describes how to locate certain resources. Section 4 contains five tables and thirteen forms.

1.1 You should use this appendix if you need to:

1. Determine whether a chemical has a Henry's law constant at 25° C that is less than 0.1 y/x atmosphere per mole fraction (see section 2.1).

2. Determine a fraction measured (Fm) value for a chemical (see section 2.2).

3. Subtract the concentration of a chemical from a Method 25D concentration (see section 2.3).

4. Determine the fraction removed (Fr) value for a chemical that has a Henry's law constant at 25° C that is greater than or equal to 0.1 y/x atmosphere per mole fraction (see section 2.4).

5. Determine the fraction emitted (Fe) value for a chemical that has a Henry's law constant at 25° C that is greater than or equal to 0.1 y/x atmosphere per mole fraction (see section 2.5).

6. Calculate a Henry's law constant at a specific temperature using a Henry's law constant at a different temperature for the same chemical (see section 2.6).

1.2 This appendix requires documentation for some procedures. The referencing subpart, i.e., the rule to which you are complying, may require additional recordkeeping and may specify records concerning this appendix that are to be included in reports.

1.3 When the term ''WATER8'' is used in this appendix, the term ''WATER8, or updates to WATER8'' must be used for the purposes of this appendix. When the term ''CHEM9'' is used in this appendix, the term ''CHEM9, or updates to CHEM9'' must be used for the purposes of this appendix. When the terms ''waste'' or ''wastewater'' are used in this appendix, the term ''waste or wastewater, as applicable to the referencing subpart'' must be used for the purposes of this appendix. When the terms ''Henry's law constant'' or ''Henry's law constants'' are used in this appendix, the terms ''Henry's law constant(s) with units of atmosphere per mole fraction'' must be used for the purposes of this subpart.

2. *Procedures.*

2.1 *How to determine whether a chemical has a Henry's law constant at 25° C that is less than 0.1 y/x.* You must use one of the following to determine whether a chemical has a Henry's law constant that is less than 0.1 y/x atmosphere per mole fraction.

2.1.1 *Use Table 1.* The chemicals listed in Table 1 have a Henry's law constant at 25° C that is less than 0.1 y/x atmosphere per mole fraction.

2.1.2 *Use CHEM9 or WATER8.* Use CHEM9 or WATER8 to determine the Henry's law constant at 25° C. You must know compound properties, such as solubility in water and vapor pressure, and the structure of the compound to estimate a Henry's law constant using CHEM9 or WATER8.

2.1.3 *Determine experimentally.* The Henry's law constant may be measured by several laboratory techniques. These techniques can be categorized as either two phase closed systems techniques or open system techniques.

2.1.3.1 *Two phase closed systems.* For two phase closed system techniques, the volume of each phase and two concentration measurements are needed. The concentration measurements are: (1) concentration in one of the phases, and (2) either the concentration in the other phase or the total concentration in both phases. Use Form 1 to calculate the Henry's law constant for two phase closed systems.

2.1.3.2 *Open systems.* For open systems, gas is passed through a liquid volume containing the compound. The Henry's law constant is calculated from the rate of stripping of the compound from the water. Use Form 2 to calculate the Henry's law constant for open systems.

2.1.4 *Calculate a Henry's law constant at 25° C from a Henry's law constant at a different temperature for the same chemical.* Use the procedures specified in section 2.6 to calculate a Henry's law constant at 25° C from a Henry's law constant at a different temperature for the same chemical.

2.2. *How to determine a Fm value for a chemical.* Fm means compound-specific fraction measured factor, and it has the units of mass measured by Method 25D divided by the total mass in the wastewater. You must use one of the following to determine the Fm value for a chemical.

2.2.1 *Use Table 1 or Table 2.* To determine the Fm value for a chemical with a Henry's law constant at 25° C that is less than 0.1 y/x atmosphere per mole fraction, use the Fm value listed for the chemical in Table 1. To determine the Fm value for a chemical with a Henry's law constant at 25° C that is greater than or equal to 0.1 y/x, use the Fm value listed for the chemical in Table 2.

Note to section 2.2.1: Table 1 and Table 2 include Fm values for Method 25D and for Method 305. Unless otherwise specified in this appendix or the referencing subpart, use the Fm values for Method 25D.

2.2.2 *Use CHEM9.* Use CHEM9 to determine an Fm value. You must know the structure of the chemical and certain other compound properties, e.g., boiling point, Antoine's coefficients, vapor pressure, and solubility in water, to estimate an fm value using CHEM9. The accuracy of the computer estimation procedure depends on the nature of the compound and the quality of the available data. The procedure is flexible in that the method can be used with a variety of different types of compound data. You must confirm and document the compound properties used as inputs for CHEM9 and the lack of availability for missing compound properties. In some cases, this method is not accurate, especially with missing compound properties. Before accepting the estimation values of CHEM9 in these cases, you must document the consistency of the predicted values with other related experimental data.

2.2.3 *Measure the Fm value.* Spike a sample of waste with a known amount of the compound of interest. Measure the concentration of the sample using Method 25D. The Fm value for the recovery of a specific chemical is the ratio of the Method 25D concentration to the actual concentration in the waste sample. You must minimize loss of organic compounds during sample collection and analysis, and maintain sample integrity. An example of acceptable sampling and handling procedures are the sampling and handling requirements in Method 25D.

2.2.4 *Extrapolating a Method 25D Fm Value from a Method 305 Fm value.* Method 305 measures the recovered concentration, not the actual concentration in the wastewater. The Method 25D correction value may be obtained from the Method 305 value and the ratio of the Method 25D value to the Method 305 value for that compound. This ratio for a compound is independent of the wastewater and may be determined once for each compound.

2.3 *How to subtract a chemical from a Method 25D concentration.* You must follow the procedures specified in sections 2.3.1 through 2.3.5 to subtract a chemical's concentration from the total concentration measured by Method 25D. You may only subtract from the total Method 25D concentration compounds for which you have a measured concentration (i.e., you must not subtract compounds for which test results are below the quantification limit.) If an Fm value cannot be determined for a chemical, the concentration of the chemical cannot be subtracted from the Method 25D results. You must follow the procedures in Form 3 to subtract a chemical from a Method 25D concentration. Form 4 provides an example.

2.3.2 *Determine the concentration for each chemical in the wastewater stream that will be subtracted from the Method 25D concentration.* The concentration for each chemical must be determined using a method and sampling procedure specified in the referencing subpart. Methods other than Method 25D and Method 305 are considered alternative methods for the purposes of this appendix.

2.3.3 *Determine the correct Fm value.* If an Fm value is needed, use the procedures in section 2.2 of this appendix to determine the correct Fm value.

2.3.4 *Adjust the concentration of chemicals which may be subtracted from the Method 25D concentration.* You must multiply the concentration of the chemical measured by the alternative method (i.e., a method that is not Method 25D or Method 305 and that is specified in the referencing subpart) by the Method 25D Fm. The product will be the adjusted concentration for that chemical. This adjustment must be done for each chemical you subtract from the concentration measured by Method 25D.

2.3.5 *Subtract.* Subtract the product(s) you calculated from the Method 25D concentration.

2.4 *How to determine an Fr value for a chemical with a Henry's law constant at 25° C that is greater than or equal to 0.1 y/x.* Fr means fraction removal value and is unitless. You must use one of the following to determine a Fr value.

2.4.1 *Use Table 2.* Use the Fr value listed for the chemical in Table 2. The chemicals listed in table 2 have a Henry's law constant at 25° C that is greater than or equal to 0.1 y/x.

2.4.2 *Use 0.99.* Assign an Fr value of 0.99 to any chemical. This is the highest Fr value that is assigned to a chemical.

2.4.3 *Use CHEM9.* Use CHEM9 to determine the Fr value of a chemical. You must know the compound structure and the Henry's law constant at 100° C to estimate an Fr value using CHEM9. The Henry's law constant at 100° C for a chemical must be determined as specified in either section 2.4.3.1, 2.4.3.2, or 2.4.3.3. The method used to determine the Henry's law constant at 100° C for a chemical must be documented.

2.4.3.1 *Determine Henry's law at 100° C experimentally.* The Henry's law constant

may be measured by several laboratory techniques. These techniques can be categorized as either two phase closed systems techniques or open system techniques.

2.4.3.1.1 *Two phase closed systems.* For two phase closed system techniques, the volume of each phase and two concentration measurements are needed. The concentration measurements are: (1) concentration in one of the phases, and (2) either the concentration in the other phase or the total concentration in both phases. Use Form 1 to calculate the Henry's law constant for two phase closed systems.

2.4.3.1.2 *Open systems.* For open systems, gas is passed through a liquid volume containing the compound. The Henry's law constant is calculated from the rate of stripping of the compound from the water. Use Form 2 to calculate the Henry's law constant for open systems.

2.4.3.2 *Calculate a Henry's law constant at 100° C from a Henry's law constant at a different temperature for the same chemical.* Use the procedures in section 2.6 to calculate a Henry's law constant at 100° C from a Henry's law constant at a different temperature for the same chemical.

2.4.3.3 *Literature Value.* Experimental values of Henry's law constants at a 100° C for some chemicals are available in data bases or reported in the literature. You must provide the reference for and description of any database or literature you used.

2.5 *How to determine an Fe value for a chemical that has a Henry's law constant at 25° C that is greater than or equal to 0.1 y/x.* Use the appropriate Fe value as specified in the referencing subpart.

2.5.1 *Default Fe values for emissions from both the individual drain system and the treatment process.* You must measure the temperature of the wastewater stream at the point of determination, unless another location is specified by the referencing subpart. If the temperature of the wastewater stream is less than or equal to 35° C, you may use the default Fe values listed in either Table 2 or Table 3. If the temperature of the wastewater stream is greater than 35° C, you must use the default Fe values listed in Table 3.

2.5.1.1 *Use Table 2.* To use Table 2, use the default Fe value listed for the chemical in Table 2.

2.5.1.2 *Use Table 3.* You must either use a default Fe listed in Table 3 or use Table 3 to interpolate an Fe value. To use Table 3, you must determine the chemical's Henry's law constant at the temperature you measured for the wastewater stream. You must find this Henry's law constant in the table and select an Fe value greater than or equal to the Fe value that corresponds to the Henry's law constant.

2.5.2 *Site-specific Fe values for emissions from the individual drain system.* Use WATER8 and Forms 6 and 7 for each type of waste management unit modeled and Forms 8 through 13, as appropriate for the different types of waste management units. (Note that this Fe value does not include Fe values for the treatment process.)

2.5.3 *Default Fe values for emissions from the biological treatment process (Fet).* The default Fe values in Table 4 and Table 5 are Fe values for the biological treatment system (i.e., the wastewater treatment plant) and have been assigned the abbreviation ''Fet.'' You must measure the temperature of the wastewater stream(s) treated in the biological treatment system at the inlet to the biological treatment system (e.g., at the bar screen). If the temperature of the wastewater stream(s) is less than or equal to 35° C, you must use either Table 4 or Table 5 to determine the Fet value. If the temperature of the wastewater stream is greater than 35° C, you must use Table 5 to determine the Fet value.

2.5.3.1 *Use Table 4.* To use Table 4, use the default Fet value listed for the chemical in Table 4.

2.5.3.2 *Use Table 5.* To use Table 5, you must either use a default Fet listed in Table 5 or use Table 5 to interpolate an Fet value. You must determine the chemical's Henry's law constant at the temperature you measured for the wastewater stream. You must find this Henry's law constant in the table and select an Fet value greater than or equal to the Fet value that corresponds to the Henry's law constant.

2.6 *How to calculate a Henry's law constant from a Henry's law constant at a different temperature for the same chemical.* Use WATER8 and Form 5 to estimate a Henry's law constant from a Henry's law constant at a different temperature for the same chemical.

3. *Location of resources.*

3.1 *Where to find information on CHEM9 and WATER8.*

3.1.1 *CHEM9 and WATER8 access via Internet.* You can find CHEM9 and WATER8 on the Internet by accessing EPA's Technology Transfer Network (TTN) via the Internet. The Internet address is: http://www.epa.gov/ttn/chief/software.html. If you need more information on the TTN, contact the systems operator at (919) 541–5384.

3.1.2 *Procedures used in CHEM9.* Reports describing the CHEM9 procedures for estimating Fm, Fr, and Fe values are in Docket Number A–94–32, Item IV–A–1. The database for CHEM9 is not available as a hard copy.

Docket No. A–94–32 is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, first floor, 401 M Street SW, Washington, DC 20460, or by calling (202) 260–7548 or 260–7549. A reasonable fee may be charged for copying.

3.2 *Methods.*

Method 25D can be found in 40 CFR part 60, Appendix A.

Method 305 can be found in 40 CFR part 63, Appendix A.

4. *Tables and Forms.* This section contains 5 tables and 13 forms.

TABLE 1 OF APPENDIX J.—FM VALUES FOR HENRY'S LAW CONSTANTS AT 25°C LESS THAN 0.1 (Y/X) ATMOSPHERES PER MOLE FRACTION

[Use with Section 2.1]

Compound	Y/X	Fm 25D	Fm 305
1H IMIDAZOLE	0.000004	0.001	0.001
2,4 D	0.000000	0.151	0.167
2,4,5 BENZOIC ACID	0.000007	0.000	0.000
2-HYDROXYETHANAL	0.001400	0.031	0.059
3,4-DIMETHYLPHENOL xylenol	0.004200	0.018	0.017
3,5-DIBROMO-4HYDROXYBENZONITRILE	0.011700	0.021	0.033
3-OXOPROPANOIC ACID	0.007900	0.002	0.004
4-OXOBUTANOIC ACID	0.011100	0.004	0.006
5-OXOPENTANOIC ACID	0.013900	0.005	0.007
ACETALDOL	0.001900	0.011	0.016
ACETAMIDE	0.000100	0.305	0.463
ACETYL-2-THIOUREA, 1-	0.001600	0.034	0.053
ACETYL-5-HYDROXYPIPERIDINE 3	0.038900	0.001	0.001
ACETYLAMINOFLUORENE, 2-	0.074400	0.020	0.018
ACETYLPIPERIDINE 3	0.006900	0.151	0.175
ACRIDINE ORANGE*	0.013300	0.050	0.049
ACRIDINE YELLOW*	0.000400	0.001	0.001
ACRYLAMIDE	0.000015	0.003	0.003
ACRYLIC ACID	0.011000	0.431	0.643
ADAMANTANE DICARBOXYLIC ACID	0.002600	0.001	0.001

TABLE 1 OF APPENDIX J.—FM VALUES FOR HENRY'S LAW CONSTANTS AT 25°C LESS THAN 0.1 (Y/X) ATMOSPHERES PER MOLE FRACTION—Continued

[Use with Section 2.1]

Compound	Y/X	Fm 25D	Fm 305
ADENINE	0.000005	0.001	0.002
ADIPIC ACID	0.000003	0.001	0.001
ADIPONITRILE	0.000700	0.004	0.004
ALACHLOR (M)	0.001800	0.090	0.090
alpha-PICOLINE	0.025900	0.870	0.842
AMETRYN	0.000001	0.001	0.001
AMINOBIPHENYL, 4-	0.017200	0.012	0.011
AMINOETHYLPIPERAZINE	0.000021	0.001	0.001
AMINOPHENOL, 3-	0.003400	0.035	0.040
AMINOPYRIDINE, 4-	0.000005	0.000	0.001
ANILINE	0.097800	0.142	0.138
ANISIDINE, o-	0.097200	0.011	0.013
ANTHRAQUINONE	0.000200	0.001	0.001
ATRAZINE (M)	0.000200	0.117	0.117
BENZENE ACETIC ACID	0.025500	0.014	0.015
BENZENE ARSONIC ACID (M)	0.000006	0.124	0.124
BENZENE DICARBOXYLIC ACID	0.000900	0.001	0.001
BENZENE SULFONIC ACID (M)	0.043900	0.146	0.146
BENZIDINE	0.000001	0.000	0.000
BENZO (A) ANTHRACENE	0.000077	0.121	0.095
BENZO(A) PYRENE	0.000077	1.267	1.000
BENZO (ghi) PERYLENE	0.002800	0.006	0.005
BENZO (k) FLUORANTHENE	0.000059	0.001	0.001
BENZOIC ACID	0.001000	0.003	0.003
BENZOTHIAZOLONE 2 (2H)-*	0.065600	0.121	0.123
BENZYL ALCOHOL	0.033900	0.069	0.067
BHC, gamma-	0.027400	1.035	0.973
BIS (2-ETHYLHEXYL) PHTHALATE	0.016700	0.317	0.327
BROMOCHLOROMETHYL ACETATE	0.010400	0.342	0.541
BUTYL CELLOSOLVE	0.014600	0.095	0.120
BUTYL-m-CRESOL MONO T	0.052100	0.042	0.039
BUTYL-p-CRESOL MONO T	0.052100	0.042	0.039
BUTYRIC ACID	0.096100	0.089	0.124
CAPROLACTAM	0.000200	0.002	0.003
CAPROLACTONE	0.071100	0.205	0.248
CATECHOL	0.000002	0.000	0.000
CHLORACETOPHENONE, 2-	0.048400	0.161	0.152
CHLORO (-p) CRESOL (-m)	0.009100	0.029	0.028
CHLORO-1, 2-ETHANE DIOL (M)	0.005400	0.999	0.999
CHLORO-2, 5-DIKETOPYRROLIDINE 3 (M)	0.003700	0.430	0.430
CHLOROACETIC ACID	0.003600	0.020	0.028
CHLOROANILINE, p-	0.014700	0.069	0.067
CHLOROBENZOPHENONE (PARA)	0.000200	0.313	0.283
CHLOROBENZYLATE	0.000028	0.000	0.000
CHLOROHYDRIN, a 3 CHLORO 1, 2 PROPAN	0.000300	0.003	0.004
CHLOROPHENOL POLYMERS (M)	0.005600	0.000	0.000
CHLOROPHENOL-4	0.062200	0.032	0.031
CHOLINE CHLORIDE	0.000600	0.012	0.015
CHRYSENE	0.000066	0.006	0.004
CITRIC ACID	0.000000	0.000	0.000
CREOSOTE (M)	0.004400	0.025	0.025
CRESOL	0.090000	0.049	0.047
CRESOL (-m)	0.039400	0.035	0.033
CRESOL (-o)	0.091200	0.057	0.055
CRESOL (-p)	0.039700	0.028	0.027
CUMYLPHENOL-4	0.093300	0.002	0.002
CYANIDE methyl	0.001500	0.328	0.417
CYANOMETHYL BENZOATE 4 (M)	0.000700	0.128	0.128
DIAZINON	0.001200	0.001	0.001
DIBENZO (a,h) ANTHRACENE	0.002100	0.001	0.001
DIBUTYLPHTHALATE	0.015600	0.002	0.002
DICHLORO—(2,6)-NITROANILINE (4) (M)	0.000400	0.122	0.122
DICHLOROANILINE 2, 3	0.029900	0.049	0.047
DICHLOROBENZONITRILE,2 ,6-	0.064400	0.338	0.322
DICHLOROPHENOL 2, 5	0.086100	0.151	0.148
DICHLOROTETRAHYDROFURAN 3, 4 (M)	0.007800	0.303	0.303
DICHLORVOS	0.019000	0.008	0.011
DIETHANOLAMINE	0.000000	0.000	0.000
DIETHYL (N, N) ANILINE	0.003200	0.964	0.907

TABLE 1 OF APPENDIX J.—FM VALUES FOR HENRY'S LAW CONSTANTS AT 25°C LESS THAN 0.1 (Y/X) ATMOSPHERES PER MOLE FRACTION—Continued

[Use with Section 2.1]

Compound	Y/X	Fm 25D	Fm 305
DIETHYL PROPIONAMIDE, 2aN (M)	0.001100	0.089	0.089
DIETHYLENE GLYCOL	0.077800	0.000	0.000
DIETHYLENE GLYCOL DIMETHYL ETHER	0.083800	0.105	0.150
DIETHYLENE GLYCOL MONOBUTYL ETHER	0.001200	0.003	0.003
DIETHYLENE GLYCOL MONOETHYL ETHER	0.002700	0.005	0.007
DIETHYLENE GLYCOL MONOETHYL ETHER A	0.035800	0.007	0.010
DIETHYLENE GLYCOL MONOMETHYL ETHER	0.003200	0.004	0.007
DIETHYLENETRIAMINE	0.000001	0.000	0.000
DIETHYLHYDRAZINE N, N	0.019000	0.184	0.253
DIETHYLTHIOPHOSPHATEBENZO M ETHYL P	0.001200	0.000	0.000
DIMETHOATE (M)	0.050900	0.110	0.110
DIMETHYL CARBAMOYL CHLORIDE	0.024700	0.116	0.151
DIMETHYL DISULFIDE	0.083300	0.455	1.000
DIMETHYL FORMAMIDE	0.010600	0.009	0.013
DIMETHYL HYDRAZINE (1, 1)	0.091100	0.277	0.382
DIMETHYL PHTHALATE	0.054800	0.006	0.007
DIMETHYLAMINOAZOBENZENE,4-	0.004100	0.022	0.023
DIMETHYLBENZ (A) ANTHRACENE (7, 12)	0.000015	0.008	0.006
DIMETHYLBENZIDINE 3,3	0.000075	0.000	0.000
DIMETHYLSULFONE	0.001300	0.002	0.003
DIMETHYLSULFOXIDE	0.026900	0.037	0.057
DINITRO-o-CRESOL (4, 6)	0.078000	0.009	0.016
DIPHENYLHYDRAZINE (1, 2)	0.013600	0.462	0.448
DIPROPYLENE GLYCOL	0.000900	0.002	0.003
ENDRIN	0.084400	0.005	0.004
EPINEPHRINE (M)	0.020300	0.133	0.133
ETHANOLAMINE (mono-)	0.017800	0.004	0.007
ETHYL CARBAMATE	0.000600	0.004	0.008
ETHYL MORPHOLINE, ethyl diethylene	0.011300	0.048	0.059
ETHYLENE GLYCOL	0.000100	0.002	0.005
ETHYLENE GLYCOL MONOBUTYL ETHER	0.029200	0.056	0.071
ETHYLENE GLYCOL MONOETHYL ETHER	0.061700	0.111	0.144
ETHYLENE GLYCOL MONOETHYL ETHER AC	0.098600	0.057	0.089
ETHYLENE GLYCOL MONOMETHYL ETHER	0.045800	0.101	0.163
ETHYLENE GLYCOL MONOPHENYL ETHER	0.003800	0.005	0.005
ETHYLENE GLYCOL MONOPROPYL ETHER	0.047400	0.182	0.242
ETHYLENE THIOUREA	0.000008	0.001	0.002
ETHYLPHENOL, 3-	0.005600	0.021	0.020
FLUOROACETIC ACID, SODIUM SALT*	0.000300	0.750	1.000
FORMALDEHYDE	0.018700	0.533	1.000
FORMAMIDE	0.065600	0.092	0.170
FORMIC ACID	0.038900	0.078	0.225
FUMARIC ACID	0.092200	0.000	0.000
GLUTARIC ACID	0.001100	0.000	0.000
GLYCERIN (GLYCEROL)	0.000700	0.000	0.000
GLYCINAMIDE	0.008200	0.019	0.089
GLYOXYLIC ACID	0.006200	0.001	0.002
GLYPHOSATE	0.000400	0.005	0.009
GUANIDINE, NITROSO*	0.048900	0.000	0.001
GUTHION	0.000093	0.001	0.001
GYLCIDOL	0.050100	0.024	0.032
HEXAMETHYLENE 1, 6 DIISOCYANATE	0.014800	0.005	0.007
HEXAMETHYLPHOSPHORAMIDE	0.000000	0.000	0.000
HEXANOIC ACID	0.058900	0.061	0.075
HYDRAZINE	0.037000	0.190	0.332
HYDROCYANIC ACID (M)	0.025800	0.999	0.999
HYDROQUINONE	0.000080	0.000	0.000
HYDROXY-(2)-PROPIONITRILE	0.004200	0.003	0.004
HYDROXYPROPIONALDEHYDE	0.013200	0.066	0.102
INDENO(1,2,3-cd)-PYRENE	0.000000	0.000	0.000
LEAD ACETATE (M)	0.000041	0.062	0.062
LEAD SUBACTEATE (M)	0.000800	0.000	0.000
LEUCINE (M)	0.030000	0.469	0.469
MALATHION (M)	0.006700	0.060	0.060
MALEIC ACID	0.000800	0.000	0.000
MALEIC ANHYDRIDE	0.012200	0.027	0.043
MALIC ACID (hydroxybutaneoic)	0.000000	0.000	0.000
MESITYL OXIDE (M)	0.019500	0.999	0.999
METHANE SULFONIC ACID*	0.026700	0.000	0.001

TABLE 1 OF APPENDIX J.—FM VALUES FOR HENRY'S LAW CONSTANTS AT 25°C LESS THAN 0.1 (Y/X) ATMOSPHERES PER MOLE FRACTION—Continued

[Use with Section 2.1]

Compound	Y/X	Fm 25D	Fm 305
METHOMYL	0.045100	0.008	0.013
METHOXYPHENOL P	0.017200	0.003	0.003
METHYL HYDRAZINE	0.024800	0.082	0.155
METHYL METHANESULFONATE	0.000039	0.001	0.001
METHYL PARATHION	0.000007	0.012	0.020
METHYL SULFURIC ACID (M)	0.031200	0.794	0.794
METHYL THIOPHENOL 4	0.024400	0.885	1.000
METHYL-2-METHOXYAZIRIDINE 1	0.024200	0.727	0.998
METHYLENE DIPHENYL DIISOCYANATE	0.002700	0.010	0.011
METHYLENE DIPHENYLAMINE (MDA)	0.001600	0.002	0.002
METHYLENE-BIS (2-CHLOROANILINE), 4, 4	0.018700	0.008	0.008
METHYLENEDIANILINE 4, 4	0.028500	0.001	0.001
METHYLETHYLIDENE BISPHENOL, 4, 4'	0.000001	0.000	0.000
METHYLFURFURAL 5	0.012200	0.859	1.000
METHYLIMINOACETIC ACID	0.055600	0.002	0.004
MONOMETHYL FORMANIDE	0.000054	0.003	0.005
NABAM	0.000000	0.000	0.000
NAPHTHOL, alpha-	0.001400	0.004	0.004
NAPHTHOL, beta-	0.000800	0.003	0.003
NAPHTHYLAMINE, alpha-	0.002800	0.005	0.005
NAPHTHYLAMINE, beta-	0.002000	0.004	0.004
NEOPENTYL GLYCOL	0.000900	0.004	0.005
NIACIN (M)	0.034200	0.606	0.606
NIACINAMIDE(M)	0.067800	0.623	0.623
NITROANILINE (-o) (M)	0.027800	0.351	0.351
NITROGLYCERIN	0.000000	0.013	0.047
NITROPHENOL, 2-	0.006500	0.011	0.016
NITROPHENOL, 4-	0.000073	0.001	0.001
NITROSODIMETHYLAMINE N	0.048800	0.103	0.285
NITROSODI-n-PROPYLAMINE N	0.025200	0.088	0.105
NITROSODIPHENYLAMINE N*	0.046000	0.026	0.025
NITROSOMORPHOLINE	0.004700	0.011	0.019
NITROSO-N-METHYLUREA N	0.001400	0.015	0.037
OODIETH . O2ETH . THIOETH . PHOSPHORATE (M)	0.000000	0.096	0.096
OXALIC ACID	0.000200	0.010	0.028
PARATHION	0.034000	0.001	0.001
PENTAERYTHRITOL	0.000021	0.000	0.000
PHENACETIN (M)	0.012400	0.135	0.135
PHENOL	0.072200	0.036	0.035
PHENYL MERCURIC ACETATE (M)	0.000700	0.057	0.057
PHENYLACETIC ACID (M)	0.045600	0.385	0.385
PHENYLENE DIAMINE (-m)	0.000600	0.000	0.000
PHENYLENE DIAMINE (-o)	0.000600	0.001	0.002
PHENYLENE DIAMINE (-p)	0.000070	0.001	0.001
PHORATE (M)	0.024300	0.095	0.095
PHTHALIC ANHYDRIDE	0.044100	0.016	0.019
PROPANE SULTONE, 1, 3-	0.000500	0.001	0.002
PROPANONAL (methylglyoxal)	0.001700	0.161	0.242
PROPIOLACTONE b	0.006400	0.199	0.304
PROPORUR (Baygon)	0.003200	0.004	0.004
PROPYLENE GLYCOL	0.083300	0.005	0.008
PYRIDINIUM BROMIDE (M)	0.091700	0.060	0.060
PYRUVIC ACID	0.000200	0.003	0.005
QUINOLINE	0.015000	0.002	0.002
QUINONE	0.057700	0.868	1.000
RESORCINOL	0.001000	0.000	0.000
SIMAZINE (M)	0.000045	0.124	0.124
SODIUM ACETATE	0.000200	0.042	0.079
SODIUM ACRYLATE	0.076100	0.073	0.108
SODIUM FORMATE	0.000094	0.356	0.988
STRYCHNIDIN-10-ONE, 2, 3-DIMETHOXY(M)	0.000800	0.028	0.028
STRYCHNINE (M)	0.000002	0.058	0.058
SUCCINIC ACID	0.000097	0.000	0.001
SUCCINIMIDE*	0.001800	0.000	0.001
SULFANILIC ACID (M)	0.088900	0.138	0.138
TEREPHTHALIC ACID	0.000600	0.001	0.001
TETRAETHYLDITHIOPYROPHOSPHATE	0.00040	.....	.....
TETRAETHYLENE GLYCOL MONOMETHYL ETH	0.000200	0.000	0.001
TETRAETHYLENE PENTAMINE	0.000000	0.000	0.000

TABLE 1 OF APPENDIX J.—FM VALUES FOR HENRY'S LAW CONSTANTS AT 25°C LESS THAN 0.1 (Y/X) ATMOSPHERES PER MOLE FRACTION—Continued

[Use with Section 2.1]

Compound	Y/X	Fm 25D	Fm 305
TETRAETHYLENE PENTAMINE	0.000000	0.000	0.000
TETRAHYDRO 3-FURANOL	0.034400	0.095	0.134
THIOFANOX (M)	0.000500	0.116	0.116
THIOSEMICARBAZIDE*	0.003300	0.000	0.000
THIOUREA, 1- (o-CHLOROPHENYL)-	0.000001	0.000	0.001
TOLUENE DIAMINE (2, 4)	0.000070	0.001	0.001
TOLUENE DIISOCYANATE (2, 4)	0.009200	0.000	0.000
TOLUENEDIAMINE (2, 6)	0.000001	0.000	0.000
TOLUENEDIAMINE (3, 4)	0.000200	0.002	0.002
TOLUIC ACID (para-)	0.000300	0.011	0.012
TOLUIDINE m	0.089400	0.123	0.118
TRICHLORO (1, 1, 2) TRIFLUOROETHANE	0.000008	1.042	1.000
TRIETHANOLAMINE	0.000008	0.000	0.000
TRIETHYLENE GLYCOL DIMETHYL ETHER	0.002600	0.017	0.025
TRIETHYLENE GLYCOL MONOMETHYL ETHER	0.001900	0.004	0.005
TRIETHYLENE TETRAMINE	0.000000	0.000	0.000
TRIPROPYLENE GLYCOL	0.005300	0.004	0.005
WARFARIN	0.000000	0.000	0.000

*Molecular structure only approximate.
(M) fraction measured (fm) estimated from Mwt correlation.

TABLE 2 OF APPENDIX J.—FR, FM, AND FE [1] VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25° C GREATER THAN OR EQUAL TO 0.1 Y/X ATMOSPHERE PER MOLE FRACTION

Compound	FR	Fm25D	Fm305	Fe [1]	CAS
1 BROMO 2 CHLORO 2 BUTENE	0.990	0.786	1.000	0.761	
1 BUTYENE	0.990	1.172	1.000	0.872	
1 ETHYL 4 METHYLBENZENE	0.990	1.219	1.000	0.748	
1 HEPTANOL	0.946	0.525	0.564	0.186	
1 HEPTYNE	0.990	1.138	1.000	0.980	
1 HEXYNE	0.990	1.145	1.000	0.924	
1 ISOCYANO 3-METHYLBENZENE	0.990	0.870	0.913	0.210	
1 ISOPROPYL 4 METHYLBENZENE	0.990	1.193	1.000	0.804	
1 METHYLCYCLOHEXENE	0.990	1.138	1.000	0.980	
1 METHYLNAPHTHALENE	0.990	1.237	1.000	0.384	
1 NONYNE	0.990	1.128	1.000	0.980	
1 OCTENE	0.990	1.112	1.000	0.980	
1 OCTYNE	0.990	1.132	1.000	0.980	
1 PENTYNE	0.990	1.156	1.000	0.885	
1,1 DIETHOXYETHANE	0.985	0.810	0.996	0.320	
1,1,3 TRIMETHYLCYCLOPENTANE	0.990	1.124	1.000	0.980	
1,1-DIFLUOROETHANE	0.990	1.077	1.000	0.876	
1,2 DIETHOXYETHANE	0.932	0.762	0.999	0.309	
1,2,4,5 TETRAMETHYLBENZENE	0.990	1.194	1.000	0.887	
1,3-DIOXOLANE	0.642	0.764	1.000	0.232	646–06–0
1,4 PENTADIENE	0.990	1.176	1.000	0.980	
1,5 HEXADIENE	0.990	1.155	1.000	0.980	
1-NITROPROPANE	0.966	0.522	0.982	0.374	
1-PENTANOL	0.990	0.708	0.807	0.579	
1-PENTENE	0.990	1.124	1.000	0.980	
1-PROPOXY 2-PROPANOL	0.430	0.134	0.167	0.070	
2 BUTEN 1 OL	0.207	0.703	0.801	0.095	
2 HEPTANONE	0.990	0.955	0.991	0.356	
2 METHYL 1 BUTANOL	0.797	0.721	0.807	0.201	
2 METHYL 2 BUTENE	0.990	1.143	1.000	0.980	
2 METHYL 2 PENTANOL	0.959	0.806	0.869	0.257	
2 METHYL 3 PENTANOL	0.989	0.539	0.565	0.241	
2 METHYLHEXANE C7H16	0.990	1.099	1.000	0.980	
2 METHYLNAPHTHALENE	0.990	1.237	1.000	0.449	
2 NONANONE	0.990	0.959	0.970	0.441	
2 OCTANONE	0.990	0.961	0.983	0.350	
2 PENTANONE	0.942	0.919	0.998	0.350	
2 PENTENE	0.990	1.131	1.000	0.980	
2 PROPYLBENZENE	0.990	1.198	1.000	0.582	
2 UNDECANONE	0.990	0.927	0.922	0.495	
2-(1-METHOXY)-1-PROPANOL	0.648	0.202	0.251	0.093	
2,2 DIMETHYL PROPANOIC ACID	0.131	0.296	0.376	0.074	

TABLE 2 OF APPENDIX J.—FR, FM, AND FE [1] VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25° C GREATER THAN OR EQUAL TO 0.1 Y/X ATMOSPHERE PER MOLE FRACTION—Continued

Compound	FR	Fm25D	Fm305	Fe [1]	CAS
2,2 DIMETHYLBUTANE C6H14	0.990	1.108	1.000	0.901	
2,2 DIMETHYLPENTANE	0.990	1.106	1.000	0.980	
2,2,5 TRIMETHYLHEXANE C9H20	0.990	1.114	1.000	0.980	
2,3 DIMETHYL 1,3 BUTADIENE	0.990	1.168	1.000	0.942	
2,3 DIMETHYLBUTANE C6H14	0.990	1.115	1.000	0.980	
2,3 DIMETHYLBUTANOL	0.978	0.648	0.694	0.259	
2,3 DIMETHYLPENTANE C7H16	0.990	1.112	1.000	0.980	
2,3,4 TRIMETHYLPENTANE C8H18	0.990	1.121	1.000	0.980	
2,3-DIMETHYLPYRIDINE	0.048	1.048	1.000	0.110	
2,4 DIMETHYLPENTANE C7H16	0.990	1.112	1.000	0.980	
2,4,5 T.	.....	0.024	0.028	0.000	93–76–5
2,4-DIMETHYLPYRIDINE	0.044	1.048	1.000	0.105	
2,5-DIMETHYLPYRIDINE	0.055	1.048	1.000	0.122	
2,6,DIMETHYL2,5-HEPTADIEN4-ONE	0.990	0.906	0.882	0.354	
2,6-DIMETHYL2,5-HEPTADIEN 4-ONE	0.990	0.682	0.649	0.278	
2,6-DIMETHYLPYRIDINE	0.067	1.048	1.000	0.137	
2-CHLORO 2-METHYLBUTANE	0.990	1.078	1.000	0.726	
2-ETHYL 3-METHOXYPYRAZINE	0.990	0.039	0.050	0.151	
2-ETHYLPYRAZINE	0.746	0.452	0.527	0.070	
2-ETHYLPYRIDINE	0.080	1.041	1.000	0.141	
2-FLUOROPROPANE	0.990	1.099	1.000	0.980	
2-ISOBUTYL 3-METHOXYPYRAZINE	0.990	0.044	0.057	0.256	
2-ISOBUTYLPYRAZINE	0.969	0.362	0.395	0.096	
2-METHYL PENTANE C6H14	0.990	1.100	1.000	0.899	
2-METHYLPYRAZINE	0.626	0.505	0.613	0.068	
2-PENTANOL	0.810	0.721	0.807	0.205	
3 METHYL 1 BUTENE	0.990	1.143	1.000	0.980	
3 METHYL PYRIDINE	0.630	0.685	0.663	0.131	
3 METHYLHEPTANE C8H18	0.990	1.098	1.000	0.980	
3 METHYLHEXANE C7H16	0.990	1.099	1.000	0.980	
3,3 DIMETHYLPENTANE C7H16	0.990	1.106	1.000	0.980	
3,4-DIMETHYLPRYIDINE	0.025	1.048	1.000	0.083	
3,5-DIMETHYLPYRIDINE	0.044	1.048	1.000	0.105	
3-ETHYLPRYIDINE	0.080	1.041	1.000	0.141	
3-HEXANOL	0.990	0.638	0.694	0.294	
3-PENTEN-2-OL	0.860	0.610	0.656	0.230	
4 METHYL 1 PENTENE	0.990	1.134	1.000	0.980	
4 METHYL 2 PENTANOL	0.990	0.539	0.565	0.264	
4 METHYL 2 PENTANONE	0.385	0.923	0.968	0.145	
4 METHYLOCTANE C9H20	0.990	1.098	1.000	0.980	
4-ETHYLPYRIDINE	0.064	1.041	1.000	0.123	
4-METHYLPYRIDINE	0.990	1.033	1.000	0.109	
5 METHOXY 2 PENTANONE	0.798	0.327	0.382	0.142	
ACENAPHTHENE	0.990	1.111	0.899	0.804	83–32–9
ACENAPHTHYLENE	0.990	1.094	0.868	0.312	208–96–8
ACETAL	0.990	0.813	1.000	0.432	
ACETALDEHYDE	0.953	0.724	1.000	0.485	75–07–0
ACETATE (M)	0.990	0.558	0.558	0.794	
ACETIC ACID	0.066	0.101	0.189	0.120	64–19–7
ACETIC ANHYDRIDE	0.524	0.165	0.262	0.214	108–24–7
ACETONE	0.843	0.827	0.997	0.261	67–64–1
ACETONITRILE	0.641	0.778	0.989	0.359	75–05–8
ACETOPHENONE	0.735	0.334	0.314	0.137	96–86–2
ACETYL CHLORIDE	0.990	0.923	1.000	0.531	79–36–5
ACETYL DIETHYLMALONATE	0.978	0.018	0.025	0.156	
ACETYLENE	0.990	1.280	1.000	0.711	74–86–2
ACETYLFURAN 2 *	0.990	0.365	0.423	0.382	1192–62–7
ACETYLMETHYLPHTHALATE 4	0.990	0.036	0.048	0.127	
ACETYLPYRIDINE 3	0.990	0.927	1.000	0.980	1122–54–9
ACIFLUORFEN	0.990	0.198	0.223	0.601	
ACROLEIN	0.968	0.855	1.000	0.427	107–02–8
ACRYLONITRILE	0.969	0.876	0.999	0.429	107–13–1
ADAMANTANE DICHLORIDE	0.990	1.097	0.986	0.562	
AFLATOXINS (M)	0.990	0.063	0.063	0.406	1402–68–2
ALDICARB	0.027	0.002	0.002	0.007	116–06–3
ALDRIN	0.990	0.056	0.051	0.469	509–00–2
ALKYLIMINE CARBOXYLIC ACID N,SUB(M)	0.848	0.125	0.125	0.111	
ALLYL ALCOHOL	0.783	0.538	0.659	0.276	107–18–6
ALLYL CHLORIDE	0.990	1.092	1.000	0.887	107–05–1
ALLYL ETHER, diallyl ether	0.990	0.974	1.000	0.663	
ALPHA METHYL STYRENE	0.990	1.217	1.000	0.767	98–83–9

TABLE 2 OF APPENDIX J.—FR, FM, AND FE [1] VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25° C GREATER THAN OR EQUAL TO 0.1 Y/X ATMOSPHERE PER MOLE FRACTION—Continued

Compound	FR	Fm25D	Fm305	Fe [1]	CAS
ALPHA METHYL STYRENE DIMERS	0.990	1.186	0.975	0.855	
alpha-CHLORO-beta-METHYLNAPHTHALENE	0.990	1.197	1.000	0.828	86–52–2
ALPHA-HYDROXYACETALDEHYDE	0.990	0.031	0.059	0.515	
ALPHA-HYDROXYADIPIMIDE (M)	0.925	0.144	0.144	0.135	
AMINO-2-CHLOROTOLUENE 4	0.990	0.020	0.020	0.790	
AMINO-3-CHLORO-5-PHENYLCYCLOHEXA(M)	0.622	0.143	0.143	0.086	
AMINO-4-CHLORO-6-CYANOPYRIDINE 2(M)	0.990	0.148	0.148	0.411	
AMINO-4′-CHLOROBIPHENYL 4(M)	0.990	0.123	0.123	0.980	
AMINO-4-CHLOROPYRIDINE 2 (M)	0.990	0.514	0.514	0.710	1072–98–6
AMINO-4-NITROBENZYL ALCOHOL 2 (M)	0.742	0.149	0.149	0.102	
AMINO-4-NITROTOLUENE 2	0.990	0.000	0.001	0.802	99–55–8
AMINO-5-CHLOROPYRIDINE 2 (M)	0.990	0.514	0.514	0.384	1072–98–6
AMINOBENZOIC ACID (-p) (M)	0.624	0.368	0.368	0.086	150–13–0
AMINOCYCLOHEXANE	0.934	0.929	0.996	0.416	108–91–8
AMINOMETHYL-3-ISOXAZOLOL 5 (M)	0.990	0.760	0.760	0.287	2763–96–4
AMINOPHENOL(-o)	0.641	0.034	0.039	0.083	95–55–6
AMINOPHENOL(-p)	0.265	0.001	0.001	0.180	101–80–4
AMINO-p′-METHYLAZOBENZENE P (M)	0.990	0.119	0.119	0.852	
AMINOPROPIONITRILE 3 (M)	0.834	0.999	0.999	0.163	151–18–8
AMITROLE (M)	0.618	0.999	0.999	0.085	61–82–5
AMMONIA	0.990	0.520	1.000	0.732	7664–41–7
AMPHETAMINE(M)	0.990	0.401	0.401	0.323	60–15–1
AMYL ACETATE(-n)	0.990	0.426	0.504	0.462	628–63–7
ANETHOLE (M)	0.990	0.180	0.180	0.406	104–46–1
ANISOLE	0.990	1.036	1.000	0.731	100–66–3
ANTHRACENE	0.990	0.109	0.087	0.513	120–12–7
ARAMITE (M)	0.990	0.058	0.058	0.406	140–57–8
AURAMINE (M)	0.990	0.091	0.091	0.980	492–80–8
AZASERINE (M)	0.986	0.138	0.138	0.206	115–02–6
AZEPINE (M)	0.990	0.058	0.058	0.817	111–49–9
AZIRIDINE ethyleneimine	0.990	0.628	0.867	0.685	151–56–4
BENXENEDICARBOXYLIC ACID DIHEPTYL	0.990	0.113	0.119	0.667	
BENZ(c)ACRIDINE (M)	0.990	0.110	0.110	0.853	225–51–4
BENZAL CHLORIDE	0.990	1.159	0.996	0.798	98–87–3
BENZALDEHYDE	0.980	0.516	0.490	0.283	100–52–7
BENZALKONIUM CHLORIDE (M)	0.408	0.129	0.129	0.065	
BENZEN SULFONATE (M)	0.990	0.642	0.642	0.894	
BENZENE	0.990	1.227	1.000	0.797	71–43–2
BENZETHONIUM CHLORIDE (M)	0.956	0.001	0.001	0.140	121–54–0
BENZIDINE DIHYDROCHLORIDE(M)	0.990	0.096	0.096	0.980	531–85–1
BENZO(B)FLUORANTHENE	0.990	1.219	0.962	0.135	205–99–2
BENZO(j)FLUORANTHENE (M)	0.990	0.099	0.099	0.853	205–82–3
BENZODIOXANE-1,3 (M)	0.668	0.108	0.108	0.093	
BENZOFLUORANTHENE,3,4-(M)	0.990	0.099	0.099	0.853	205–99–2
BENZOFURAN 2,3	0.990	1.061	0.988	0.374	
BENZOIC ACID, 4 METHYL	0.642	0.102	0.108	0.103	
BENZONITRILE	0.990	0.397	0.373	0.170	100–47–0
BENZOPHENONE	0.990	0.052	0.046	0.834	119–61–9
BENZOPYRENE 3,4 (M)	0.990	0.099	0.099	0.318	50–32–8
BENZOQUINONE,p-(M)	0.990	0.862	0.862	0.794	106–51–4
BENZOTHIAZOLE *	0.990	0.059	0.060	0.341	95–16–9
BENZOTRICHLORIDE	0.990	1.069	0.958	0.558	98–07–7
BENZOYL CHLORIDE	0.990	1.132	0.979	0.468	98–88–4
BENZYL CHLORIDE	0.990	1.164	1.000	0.415	100–44–7
BENZYL METHYL ETHER	0.990	1.047	1.000	0.587	538–86–3
BHC,alpha-	0.990	1.063	1.000	0.729	319–84–6
BHC,beta-	0.990	1.063	1.000	0.854	319–85–7
BHC,delta-	0.990	1.063	1.000	0.588	319–86–8
BICYCLO(4,2,0) OCTA 1.3.5 TRIENE	0.990	1.222	1.000	0.759	
BICYCLO[2.2.1]-2,5-HEPTADIENE DI(M)	0.990	0.146	0.146	0.980	
BIPHENYL	0.990	1.074	0.864	0.445	92–52–4
BIS (2-CHLOROETHOXY) METHANE	0.282	0.170	0.196	0.067	111–91–1
BIS(1,1,2,2-TETRACHLOROPROPYL) ETHE	0.990	0.960	1.000	0.980	
BIS(2-CHLOROETHYL)ETHER	0.656	0.806	0.858	0.162	111–44–4
BIS(2-CHLOROISOPROPYL)ETHER	0.990	0.948	0.972	0.310	108–60–1
BIS(CHLOROMETHYL)ETHER	0.975	0.888	0.999	0.459	542–88–1
BISPHENOL(A)	0.990	0.011	0.011	0.665	80–05–7
BROMACIL	0.990	0.582	1.000	0.980	
BROMO-(1)-CHLOROETHANE-2	0.990	0.711	1.000	0.995	107–04–0
BROMO-3-CHLOROBUTADIENE 2	0.990	0.803	1.000	0.820	
BROMO-4-CHLORO-6-CYANOBENZYL ALC(M)	0.941	0.131	0.131	0.136	

TABLE 2 OF APPENDIX J.—FR, FM, AND FE [1] VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25° C GREATER THAN OR EQUAL TO 0.1 Y/X ATMOSPHERE PER MOLE FRACTION—Continued

Compound	FR	Fm25D	Fm305	Fe [1]	CAS
BROMO-4-CHLOROCYCLOHEXANE 1	0.990	0.819	0.986	0.980	
BROMO-4-CYANOMETHYL BENZOATE 2 (M)	0.990	0.105	0.105	0.980	
BROMO-4-CYANOMETHYL BENZOATE 3 (M)	0.990	0.105	0.105	0.885	
BROMOACETONE	0.520	0.356	0.590	0.145	598–31–2
BROMOBENZENE	0.990	1.182	1.000	0.745	108–86–1
BROMOBENZYL ALCOHOL-(m)	0.371	0.012	0.015	0.083	15852–73–
BROMOBENZYL ALCOHOL-(o)	0.371	0.012	0.015	0.083	18982–34–
BROMOBENZYL ALCOHOL-(p)	0.371	0.012	0.015	0.083	873–75–6
BROMOCHLOROBENZENE P	0.990	0.870	1.000	0.980	106–39–8
BROMOCHLOROBENZYL ALCOHOL	0.420	0.007	0.009	0.107	
BROMOCHLOROMETHANE	0.990	1.017	1.000	0.992	74–97–5
BROMODICHLOROMETHANE	0.990	0.735	1.000	0.980	75–27–4
BROMOETHYL ACETATE	0.911	0.470	0.801	0.458	927–68–4
BROMOETHYLENE	0.990	0.629	1.000	0.990	543–60–2
BROMOFORM	0.990	0.480	0.998	0.494	75–25–2
BROMOMETHANE	0.990	0.539	1.000	0.852	74–83–9
BROMOPHENYL PHENYL ETHER,4-	0.990	0.240	0.265	0.269	101–55–3
BROMOPROPIONITRILE 3 (M)	0.990	0.422	0.422	0.856	2417–90–5
BROMOTOLUENE 4	0.990	1.164	1.000	0.676	106–38–7
BROMOURACIL,5-(M)	0.990	0.130	0.130	0.980	51–20–7
BUTADIENE-(1,3)	0.990	1.187	1.000	0.979	106–99–0
BUTANE	0.990	1.080	1.000	0.980	106–97–8
BUTANEDINITRILE	0.990	0.007	0.009	0.182	110–61–2
BUTANENITRILE (M)	0.521	0.999	0.999	0.266	109–74–0
BUTANOL ISO	0.821	0.647	0.756	0.068	78–83–1
BUTANOL(S)	0.846	0.502	0.600	0.253	78–92–2
BUTANOL-1	0.818	0.502	0.600	0.177	71–36–3
BUTENE	0.990	1.131	1.000	0.980	
BUTYL ACETATE(-n)	0.990	0.808	0.995	0.368	123–86–4
BUTYL ACRYLATE	0.990	0.781	0.910	0.492	141–32–2
BUTYL BENZENE	0.990	1.181	1.000	0.980	104–51–8
BUTYL BENZYL PHTHALATE	0.990	0.052	0.053	0.852	85–68–7
BUTYL CARBITOL	0.990	0.006	0.008	0.980	112–34–5
BUTYL MERCAPTAN	0.990	0.692	1.000	0.980	
BUTYL-3-METHOXY PYRAZINE, 2-ISO (M)	0.990	0.142	0.142	0.980	24683–00-
BUTYLAMINE	0.904	0.813	0.948	0.241	109–73–9
BUTYLBUTOXY PROPIONATE	0.990	0.263	0.276	0.266	
BUTYLENE GLYCOL-(1,3)	0.780	0.003	0.004	0.096	107–88–0
BUTYLISOBUTYRATE	0.990	0.873	1.000	0.794	
BUTYRALDEHYDE	0.989	0.861	0.992	0.490	123–72–8
BUTYRALDEHYDE ISO	0.989	0.886	1.000	0.438	78–84–2
c10 linear	0.990	1.088	1.000	0.980	
c11 linear	0.990	1.088	1.000	0.980	
CACODYLIC ACID (M)	0.983	0.354	0.354	0.219	75–60–5
CAMPHENE (M)	0.990	0.383	0.383	0.588	79–92–5
CAPTAN	0.990	0.007	0.008	0.196	
CARBARYL sevin	0.990	0.015	0.016	0.202	63–25–2
CARBAZOLE (M)	0.990	0.141	0.141	0.980	86–74–8
CARBENDAZIM	0.957	0.023	0.038	0.070	
CARBON DIOXIDE (M)	0.990	0.999	0.999	0.896	
CARBON DISULFIDE	0.990	0.213	1.000	0.918	75–15–0
CARBON OXYFLUORIDE*	0.990	0.884	1.000	0.993	353–50–4
CARBON TETRACHLORIDE	0.990	1.027	1.000	0.900	56–23–5
CARBONYL FLUORIDE *	0.658	0.884	1.000	0.358	
CARBONYL SULFIDE	0.886	0.547	1.000	0.500	
CHLORAL	0.990	0.938	1.000	0.556	302–17–0
CHLORAMBEN	0.962	0.545	0.633	0.229	
CHLORAMBUCIL	0.957	0.031	0.031	0.101	305–03–3
CHLORDANE	0.990	0.438	0.407	0.151	57–74–9
CHLORENDIC ANHYDRIDE (M)	0.990	0.558	0.558	0.794	115–27–5
CHLORINATED TARS (M)	0.990	0.050	0.050	0.343	
CHLORNAPHAZINE	0.990	0.422	0.385	0.158	
CHLORO 2 BUTENE,1 trans	0.990	1.098	1.000	0.632	
CHLORO(-p)PHENYLHYDRAZINE(M)	0.990	0.286	0.286	0.398	
CHLORO-1,3-CYCLOPENTADIENE 5	0.990	1.148	1.000	0.948	
CHLORO-2,2-DIBROMOETHANE 1	0.990	0.569	0.919	0.526	
CHLORO-2,3-EPOXYPROPANE,1-(M)	0.977	0.999	0.999	0.321	106–89–8
CHLORO-2-METHOXYBENZOIC ACID 4 (M)	0.990	0.132	0.132	0.722	57479–70–
CHLORO-2-NITROBENZYL ALCOHOL 4 (M)	0.601	0.132	0.132	0.083	22996–18–
CHLORO-3-NITRO-5-PHENYLCYCLOHEXA (M)	0.631	0.131	0.131	0.087	
CHLORO-3-NITROANILINE 4 (M)	0.990	0.139	0.139	0.342	635–22–3

TABLE 2 OF APPENDIX J.—FR, FM, AND FE [1] VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25° C GREATER THAN OR EQUAL TO 0.1 Y/X ATMOSPHERE PER MOLE FRACTION—Continued

Compound	FR	Fm25D	Fm305	Fe [1]	CAS
CHLORO-4AMINOCOUMARAN-6 CARBOXYLI(M)	0.990	0.118	0.118	0.980	
CHLORO-4-CYANOBENZYL ALCOHOL 2 (M)	0.743	0.149	0.149	0.102	
CHLORO-4-HYDROXYBIPHENYL 3 (M)	0.990	0.123	0.123	0.980	92–04–6
CHLORO-4-METHOXY-6-AMINOBENZOIC(M)	0.990	0.125	0.125	0.449	
CHLORO-4-METHYL-N-METHYLBENZAMID(M)	0.832	0.134	0.134	0.109	
CHLORO-4-NITROANISOLE 2 (M)	0.990	0.131	0.131	0.980	
CHLORO-4-PHENYLPYRIDINE 2(M)	0.839	0.130	0.130	0.110	
CHLORO-5AMINO3PYRIDINE CARB.ACID (M)	0.990	0.134	0.134	0.439	
CHLORO-5-CYANOPHTHALIC ACID 4 (M)	0.990	0.112	0.112	0.980	
CHLORO-5-CYANOTOLUENE 3 (M)	0.990	0.150	0.150	0.601	
CHLORO-5-FLUOROTOLUENE 3	0.990	1.150	1.000	0.400	443–83–4
CHLORO-5-PHENOXYDIMETHYL PHTHALA(M)	0.990	0.065	0.065	0.980	
CHLOROACETALDEHYDE	0.762	0.855	0.997	0.324	107–20–0
CHLOROALLYL ALCOHOL 2	0.926	0.270	0.291	0.244	5976–47–6
CHLOROANILINE(2)	0.990	0.245	0.238	0.867	95–51–2
CHLOROANILINE(3)	0.990	0.108	0.105	0.867	108–42–9
CHLOROAZOBENZENE	0.990	1.204	1.000	0.852	
CHLOROBENZENE	0.990	1.157	1.000	0.728	108–90–7
CHLOROBENZENESULFONIC ACID (-p)(M)	0.826	0.137	0.137	0.108	100–03–8
CHLOROBENZILATE	0.876	0.000	0.000	0.030	510–15–6
CHLOROBENZOIC ACID,2	0.629	0.083	0.089	0.105	118–91–2
CHLOROBENZOIC ACID,3-	0.535	0.083	0.089	0.092	535–80–8
CHLOROBENZOIC ACID,4-	0.535	0.083	0.089	0.092	74–11–3
CHLOROBENZOTRICHLORIDE P	0.990	1.103	1.000	0.980	5216–25–1
CHLOROBENZOTRIFLUORIDE, P	0.990	1.131	1.000	0.980	
CHLOROBENZYL ALCOHOL-(m)	0.852	0.035	0.033	0.074	873–63–2
CHLOROBENZYL ALCOHOL-(o)	0.275	0.058	0.056	0.074	17849–38–
CHLOROBENZYL ALCOHOL-(p)	0.251	0.040	0.039	0.074	873–76–7
CHLOROBIPHENYL (-p)	0.990	1.204	1.000	0.840	2051–62–9
CHLOROBUTADIENE,1	0.990	1.124	1.000	0.850	
CHLOROCOUMARAN 2 (M)	0.990	0.135	0.135	0.832	2051–59–4
CHLOROCYANOBENZENE (1,4) (M)	0.990	0.362	0.362	0.980	873–32–5
CHLOROCYCLOHEXANE	0.990	1.081	1.000	0.980	542–18–7
CHLOROCYCLOHEXANOL 2	0.990	0.102	0.107	0.428	1561–86–0
CHLOROCYCLOHEXANOL 4	0.990	0.102	0.107	0.587	
CHLORODIACETYL (M)	0.990	0.651	0.651	0.980	
CHLORODIMETHYL PHTHALATE 3 (M)	0.990	0.111	0.111	0.980	
CHLORODIPHENYL THIOETHER P (M)	0.990	0.123	0.123	0.851	7005–72–3
CHLOROETHANE (ethyl chloride)	0.990	1.046	1.000	0.901	75–00–3
CHLOROETHANOL (ETHYLENE CHLOROHYDRI	0.480	0.256	0.309	0.221	107–07–3
CHLOROETHYL(2-) VINYL ETHER	0.990	0.934	1.000	0.910	110–75–8
CHLOROETHYLENE	0.990	1.064	1.000	0.757	
CHLOROFLUOROBENZENE P	0.990	1.152	1.000	0.980	352–33–0
CHLOROFLUOROMETHANE *	0.355	1.075	1.000	0.980	593–70–4
CHLOROFORM	0.990	1.023	1.000	0.775	67–66–3
CHLOROHYDROXYPHENYL4 METHYLBENZ(M)	0.990	0.094	0.094	0.980	
CHLOROMETHYL ACETYLENE *	0.990	1.121	1.000	0.980	
CHLOROMETHYL BENZOATE P (M)	0.990	0.140	0.140	0.980	1126–46–1
CHLOROMETHYL ETHYL KETONE	0.990	0.873	0.935	0.697	
CHLOROMETHYL METHYL ETHER	0.937	0.840	1.000	0.494	107–30–2
CHLOROMETHYL PHENYL KETONE	0.290	0.715	0.673	0.077	532–27–4
CHLOROMETHYL PHENYLHYDRAZINE P (M)	0.990	0.147	0.147	0.413	
CHLOROMETHYLAMINOIMINE (M)	0.990	0.999	0.999	0.913	
CHLORONAPHTHALENE,2–	0.990	1.177	0.980	0.870	91–58–7
CHLORONITROALKOXYIMINE (M)	0.958	0.110	0.110	0.142	
CHLORONITROBENZENE(-o)	0.990	0.519	0.625	0.808	88–73–3
CHLORONITROBENZENE, p	0.990	0.591	0.713	0.301	
CHLORO-N-METHYLBENZAMIDE P (M)	0.818	0.140	0.140	0.107	
CHLOROPHENOL-2	0.323	0.245	0.240	0.107	95–97–8
CHLOROPHENOL-3	0.635	0.057	0.057	0.078	108–43–0
CHLOROPHENYL PHENYL ETHER,4-*	0.990	0.861	0.775	0.389	7005–72–3
CHLOROPHENYLETHANOL 1,1	0.990	0.057	0.054	0.807	
CHLOROPHTHALIC ANHYDRIDE 4 (M)	0.595	0.133	0.133	0.083	
CHLORO-p'-METHYLBIPHENYL P (M)	0.990	0.124	0.124	0.850	1667–11–4
CHLOROPRENE	0.990	1.124	1.000	0.677	126–99–8
CHLOROPROPANE-1	0.990	1.055	1.000	0.858	540–54–5
CHLOROPROPANE-2	0.990	1.050	1.000	0.867	75–29–6
CHLOROPROPENE 3	0.990	1.092	1.000	0.980	557–98–2
CHLOROPROPIONITRILE,3–	0.359	0.580	0.622	0.111	542–76–7
CHLOROPROPYLENE-2	0.990	1.090	1.000	0.980	557–98–2
CHLORO-p-XYLENE	0.987	1.163	1.000	0.592	104–82–5

TABLE 2 OF APPENDIX J.—FR, FM, AND FE [1] VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25° C GREATER THAN OR EQUAL TO 0.1 Y/X ATMOSPHERE PER MOLE FRACTION—Continued

Compound	FR	Fm25D	Fm305	Fe [1]	CAS
CHLOROPYRIDINE 2 (M)	0.990	0.769	0.769	0.599	109–09–1
CHLOROSTYRENE (-4)	0.990	1.179	1.000	0.788	1331–28–8
CHLOROTETRAHYDROFURAN 3 (M)	0.990	0.642	0.642	0.407	
CHLOROTHIOPHENOL P *	0.990	0.893	1.000	0.980	106–54–7
CHLOROTOLUENE-4	0.990	1.164	1.000	0.741	106–43–4
CHLOROURACIL,5-(M)	0.990	0.138	0.138	0.980	1820–81–1
cis 1,2 DIMETHYLCYCLOHEXANE	0.990	1.117	1.000	0.980	
CITRUS RED #2 (M)	0.990	0.071	0.071	0.853	6358–53–8
COPPER PHTHALOCYANINE (M)	0.990	0.000	0.000	0.764	147–14–8
COUMARAN (M)	0.990	0.215	0.215	0.980	91–64–5
CROTONALDEHYDE	0.578	0.887	0.974	0.212	470–30–3
CROTONYLENE (2-BUTYNE)	0.990	1.185	1.000	0.980	503–17–3
CUMENE (isopropylbenzene)	0.990	1.197	1.000	0.876	98–82–8
CUMENE HYDROPEROXIDE	0.987	0.478	0.464	0.204	
CYANOBENZYL ALCOHOL P *	0.147	0.002	0.002	0.070	
CYANOGEN	0.990	0.800	1.000	0.747	460–19–5
CYANOGEN BROMIDE *	0.990	0.558	1.000	0.462	506–68–3
CYANOGEN CHLORIDE(M)	0.990	0.999	0.999	0.704	506–77–4
CYANOGUANIDINE (M)	0.990	0.999	0.999	0.648	461–58–5
CYANOMETHYLPHTHALATE 4 (M)	0.990	0.071	0.071	0.980	
CYANOPYRIDINE (-4) *	0.990	0.118	0.124	0.980	100–48–1
CYANOPYRIDINE 3 *	0.990	0.113	0.119	0.980	100–54–9
CYANOTOLUENE 4	0.990	0.450	0.419	0.980	
CYANURIC ACID (M)	0.491	0.505	0.505	0.072	108–80–5
CYCASIN (M)	0.990	0.099	0.099	0.794	14901–08-
CYCLOHEXADIENE1,4DIONE2,6BIS11DIMET	0.753	0.027	0.026	0.072	
CYCLOHEXANE	0.990	1.093	1.000	0.859	110–82–7
CYCLOHEXANOL	0.851	0.456	0.493	0.159	
CYCLOHEXANOL	0.925	0.243	0.262	0.136	108–93–0
CYCLOHEXANONE	0.198	0.703	0.740	0.088	108–94–1
CYCLOHEXENE	0.990	1.136	1.000	0.980	110–83–8
CYCLOHEXENE 1 ONE, 2	0.759	0.498	0.507	0.183	
CYCLOHEXYL ACETATE	0.990	0.846	0.963	0.273	622–45–7
CYCLOHEXYL-2,2-DIPHENYLETHYLAMIN(M)	0.990	0.097	0.097	0.384	
CYCLOHEXYL-4,6-DINITROPHENOL,2-(M)	0.990	0.092	0.092	0.980	131–89–5
CYCLOHEXYLAMINE	0.978	0.878	0.940	0.280	108–91–8
CYCLOHEXYLCYCLOHEXANONE 4	0.990	0.732	0.707	0.727	56025–96-
CYCLOPENTADIENE	0.990	1.198	1.000	0.980	
CYCLOPENTADIENE 1,3	0.990	1.198	1.000	0.713	
CYCLOPENTANE	0.990	1.093	1.000	0.980	
CYCLOPENTENE	0.990	1.144	1.000	0.979	
CYCLOPHOSPHAMIDE (M)	0.990	0.094	0.094	0.610	50–18–0
CYCLOPROPANE C3H6	0.990	1.093	1.000	0.980	
CYCLOHEXYL o,o-DIMETHYL PHOS.DIT(M)	0.99	0.105	0.980	0.980	
CYMENE,para	0.990	1.193	1.000	0.871	
CYTOSINE (M)	0.990	0.811	0.811	0.831	71–30–7
DAUNOMYCIN(M)	0.990	0.000	0.000	0.853	20830–81–
DAZOMET	0.900	0.085	0.153	0.066	
DDD,p,p'-	0.950	1.150	1.000	0.394	72–54–8
DDE,p,p'-	0.990	1.138	0.990	0.621	72–55–9
DDT	0.990	1.131	1.000	0.980	50–29–3
DECANAL	0.990	0.918	0.928	0.612	
DECENE, 8 METHYL 1-	0.990	1.116	1.000	0.980	
DIACETYL (M)	0.990	0.999	0.999	0.318	431–03–8
DIAMINO-5-SULFONYL BENZYL 2,4 (M)	0.990	0.133	0.133	0.628	
DIAMINODIPHENYLMETHANE P,P' (M)	0.990	0.126	0.126	0.980	101–77–9
DIAZOMETHANE	0.575	0.573	1.000	0.356	
DIBENZOFURANS	0.990	1.112	0.967	0.740	
DIBENZOPYRENE 1,2,7,8	0.990	0.803	0.633	0.720	
DIBROMO-3-CHLOROPROPANE,1,2	0.709	1.048	1.000	0.185	96–12–8
DIBROMOCHLOROMETHANE	0.990	0.585	1.000	0.643	124–48–1
DIBROMOETHANE–1,2	0.990	1.114	1.000	0.852	106–93–4
DIBROMOMETHANE	0.990	0.493	1.000	0.558	74–95–3
DIBUTYL ETHER	0.990	0.958	1.000	0.727	142–96–1
DIBUTYLAMINE	0.990	0.949	0.984	0.300	
DICHLORO 2-PROPANOL 1,3	0.990	0.237	0.257	0.570	96–23–1
DICHLORO PROPANOL 2,3	0.507	0.119	0.130	0.255	616–23–9
DICHLORO-1,3-CYCLOPENTADIENE 5,5(M)	0.990	0.413	0.413	0.980	
DICHLORO-2-BUTENE 1,2	0.990	1.079	1.000	0.562	
DICHLORO-2-BUTENE(1,4)	0.990	1.079	1.000	0.453	764–41–0
DICHLORO-2-BUTENE, 1,4	0.990	1.079	1.000	0.612	

TABLE 2 OF APPENDIX J.—FR, FM, AND FE [1] VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25° C GREATER THAN OR EQUAL TO 0.1 Y/X ATMOSPHERE PER MOLE FRACTION—Continued

Compound	FR	Fm25D	Fm305	Fe [1]	CAS
DICHLOROANILINE(2,3)	0.527	0.121	0.117	0.064	
DICHLOROBENZENE(1,2) (-o)	0.990	1.134	1.000	0.637	95–50–1
DICHLOROBENZENE(1,3) (-m)	0.990	1.134	1.000	0.719	541–73–1
DICHLOROBENZENE(1,4) (-p)	0.990	1.134	1.000	0.724	106–46–7
DICHLOROBENZIDINE,3,3'-	0.001	0.055	0.053	0.026	91–94–1
DICHLOROBENZOPHENONE P,P	0.978	0.366	0.332	0.093	90–98–2
DICHLOROBIPHENYL (PARA)	0.990	1.177	1.000	0.914	213029–08
DICHLOROBUTANE (1,4)	0.990	1.052	1.000	0.980	110–56–5
DICHLORODIPHENYLMETHANE (M)	0.990	0.107	0.107	0.855	2051–90–3
DICHLOROETHANE(1,1)	0.990	1.024	1.000	0.792	75–34–3
DICHLOROETHANE(1,2)	0.990	1.040	1.000	0.640	107–06–2
DICHLOROETHENE 1,2 trans	0.990	1.061	1.000	0.981	156–60–5
DICHLOROETHENE(1,1)	0.990	1.061	1.000	0.937	75–35–4
DICHLOROETHYL ETHER	0.872	0.711	0.757	0.212	
DICHLOROETHYLENE(1,2) cis	0.990	1.061	1.000	0.904	156–54–2
DICHLOROIODOMETHANE	0.990	0.553	0.975	0.362	
DICHLOROMONOFLUOROMETHANE	0.990	1.023	1.000	0.989	75–43–4
DICHLOROPHENOL	0.990	0.940	0.920	0.227	
DICHLOROPHENOL(2,4)	0.945	0.158	0.154	0.094	120–83–2
DICHLOROPHENOL(2,6)	0.846	0.213	0.209	0.094	87–65–0
DICHLOROPHENOXYACETIC ACID(2,4)	0.990	0.922	1.000	0.978	94–75–7
DICHLOROPROPANE 1,2	0.990	1.054	1.000	0.720	78–87–5
DICHLOROPROPENE(1,3)	0.990	1.071	1.000	0.759	542–75–6
DICHLOROPROPYLENE,1,2-(cis)	0.990	1.062	1.000	0.831	
DICHLOROPROPYLENE,1,2-(trans)	0.990	1.072	1.000	0.853	563–54–2
DICHLOROPROPYLENE-2,3	0.990	1.071	1.000	0.857	78–88–6
DICHLOROSTYRENE 2,6	0.990	1.149	1.000	0.823	
DICHLORO-TRANS-ETHYLENE(1,2)	0.990	1.061	1.000	0.980	540–59–0
DIELDRIN	0.990	0.259	0.235	0.225	60–57–1
DIETHYL AMINE	0.828	0.865	1.000	0.286	109–89–7
DIETHYL ETHER	0.990	0.856	1.000	0.423	602–97–6
DIETHYL ETHER ACID CHLORIDE (M)	0.990	0.379	0.379	0.980	
DIETHYL PHTHALATE	0.990	0.054	0.063	0.853	84–66–2
DIETHYL SULFATE	0.909	0.001	0.002	0.107	
DIETHYL THIOETHER (M)	0.990	0.999	0.999	0.980	352–93–2
DIETHYLBENZENE P	0.990	1.191	1.000	0.784	105–05–5
DIETHYLDIPHENYL UREA SYM(M)	0.990	0.091	0.091	0.859	85–98–3
DIETHYLENE GLYCOL DIETHYL ETHER	0.316	0.168	0.217	0.033	
DIETHYLUREA 1,1 (M)	0.729	0.726	0.726	0.101	634–95–7
DIHYDRO-5-OXAZALONE (DIHYDROAZLA (M)	0.990	0.982	0.982	0.722	
DIISOBUTYLENE	0.990	1.127	1.000	0.980	
DIISODECYL PHTHALATE	0.990	0.007	0.007	0.451	
DIISOPROPYL BENZENE (PARA)	0.990	1.184	1.000	0.980	100–18–5
DIISOPROPYL KETONE	0.990	0.973	1.000	0.483	
DIISOPROPYLAMINE	0.990	0.939	1.000	0.409	
DIMETHOXY METHANE	0.878	0.594	0.950	0.442	109–87–5
DIMETHOXY-(3,3')-BENZIDINE	0.990	0.000	0.000	0.660	119–90–4
DIMETHYL AMINE	0.321	0.709	0.996	0.198	124–40–3
DIMETHYL BENZ(A)ANT 7,12	0.990	1.214	0.973	0.857	
DIMETHYL BENZOIC ACID, 2,4	0.854	0.101	0.105	0.115	
DIMETHYL BENZOIC ACID, 3,5	0.854	0.101	0.105	0.115	
DIMETHYL BENZYLAMINE N,N	0.990	0.003	0.003	0.587	103–83–3
DIMETHYL METHYLTHIOCARBAMATE N,N(M)	0.990	0.676	0.676	0.863	
DIMETHYL NITROISOPROPYLAMINE N,N(M)	0.990	0.439	0.439	0.389	
DIMETHYL NITROSAMINE (M)	0.990	0.999	0.999	0.980	
DIMETHYL SULFATE	0.549	0.034	0.086	0.079	77–78–1
DIMETHYL SULFIDE	0.990	0.508	1.000	0.829	75–18–3
DIMETHYL TRISULFIDE	0.990	0.354	1.000	0.980	
DIMETHYL-1-NITROBENZENE 2,4	0.990	0.564	0.669	0.801	25168–04–
DIMETHYLACETAMIDE	0.547	0.707	0.994	0.284	
dimethylaniline N,N	0.990	0.000	0.001	0.342	57–14–7
DIMETHYLBENZYL HYDROPEROXIDE (M)	0.990	0.149	0.149	0.466	80–15–9
DIMETHYLETHYLAMINE	0.990	0.865	1.000	0.523	75–64–9
DIMETHYLGLYCOL	0.990	0.102	0.136	0.483	
DIMETHYLHYDANTOIN,5,5-(M)	0.990	0.521	0.521	0.980	77–71–4
DIMETHYLPHENOL (2,4)	0.990	0.050	0.047	0.552	105–67–9
DIMETHYLPHENYLCARBINOL (M)	0.990	0.385	0.385	0.794	617–94–7
DIMETHYLSULFOXIDE	0.854	0.821	0.990	0.419	
DINITROBENZENE M	0.023	0.564	1.000	0.285	99–65–0
DINITROPHENOL 2,4	0.990	0.004	0.008	0.059	51–28–5
DINITROTOLUENE 2,6	0.990	.....	.....	0.109	606–20–2

TABLE 2 OF APPENDIX J.—FR, FM, AND FE [1] VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25° C GREATER THAN OR EQUAL TO 0.1 Y/X ATMOSPHERE PER MOLE FRACTION—Continued

Compound	FR	Fm25D	Fm305	Fe [1]	CAS
DINITROTOLUENE (2,4)	0.390	0.052	0.085	0.178	121–14–2
DINOCAP (M)	0.990	0.043	0.043	0.980	39300–45–
DI-n-OCTYL PHTHALATE	0.990	0.000	0.000	0.980	117–84–0
DINOSEB (M)	0.990	0.105	0.105	0.575	88–85–7
DIOXANE (1,4)	0.387	0.618	0.869	0.181	123–91–1
DIOXIN (M)	0.990	0.064	0.064	0.279	828–00–2
DIPHENYL ETHER (M)	0.990	0.140	0.140	0.662	101–84–8
DIPHENYL THIOETHER (M)	0.990	0.132	0.132	0.838	139–66–2
DIPHENYLAMINE (M)	0.513	0.140	0.140	0.074	122–39–4
DIPHENYLBUTADIENE 1,3 (M)	0.990	0.122	0.122	0.647	886–65–7
DIPHENYLCHLOROMETHANE (M)	0.990	0.124	0.124	0.850	90–99–3
DIPHENYLDIKETONE (M)	0.990	0.120	0.120	0.851	134–81–6
DIPHENYLETHANE 1,1 (M)	0.990	0.134	0.134	0.551	
DIPHENYLETHANOL 1,1 (M)	0.416	0.126	0.126	0.066	599–67–7
DIPHENYLHYDRAZINE,1,1-(M)	0.990	0.133	0.133	0.796	530–50–7
DIPHENYLMETHANE	0.990	0.628	0.509	0.195	101–81–5
DIPROPYLAMINE	0.979	0.927	0.998	0.411	142–84–7
DIPROPYLBUTRAL	0.990	0.622	0.618	0.292	
DIPROPYLFORMAMIDE (M)	0.990	0.503	0.503	0.980	6282–00–4
DI-tert-BUTYL-p-CRESOL	0.990	0.031	0.028	0.072	128–37–0
DIVINYL KETONE (M)	0.990	0.999	0.999	0.457	
dodecane	0.990	1.089	1.000	0.980	
EDTA (M)	0.990	0.999	0.999	0.412	60–00–4
ENDOSULFAN	0.900	0.020	0.018	0.102	115–29–7
ENDOSULFAN SULFATE (M)	0.990	0.014	0.014	0.980	1031–07–8
ENDRIN ALDEHYDE (M)	0.990	0.999	0.999	0.412	
EPICHLOROHYDRIN	0.915	0.847	0.939	0.350	106–89–8
EPOXYBUTANE 1,2	0.990	0.879	1.000	0.582	
ETHANE	0.990	1.067	1.000	0.946	
ETHANOL	0.322	0.586	0.860	0.126	64–17–5
ETHENE	0.990	1.187	1.000	0.980	
ETHENYL 2 METHYL BENZENE, 1-	0.990	1.240	1.000	0.710	
ETHOXYETHANOL-2	0.545	0.144	0.207	0.134	110–80–5
ETHYL 2 METHYL BENZENE, 1-	0.990	1.198	1.000	0.731	
ETHYL ACETATE PEROXIDE (M)	0.990	0.659	0.659	0.706	
ETHYL ACRYLATE	0.990	0.788	1.000	0.483	140–88–5
ETHYL BUTANOATE	0.990	0.775	1.000	0.457	
ETHYL CYANIDE (PROPIONITRILE) (M)	0.990	0.999	0.999	0.580	107–12–0
ETHYL ETHER	0.990	0.856	1.000	0.506	60–29–7
ETHYL HEPTANOATE	0.990	0.868	1.000	0.470	
ETHYL ISOPROPYL PEROXIDE (M)	0.990	0.931	0.931	0.386	
ETHYL METHANOATE	0.990	0.537	1.000	0.566	
ETHYL PENTANOATE	0.990	0.813	1.000	0.428	
ETHYL PEROXIDE	0.341	0.146	0.283	0.112	
ETHYL PROPYL ETHER	0.990	0.894	1.000	0.571	
ETHYL S,S-DIPHENYL PHOSPHORODITH (M)	0.990	0.070	0.070	0.333	1709–49–8
ETHYL TOLUENE, 4	0.990	1.198	1.000	0.857	
ETHYL VINYL ETHER	0.990	0.890	1.000	0.652	
ETHYL(2) HEXANOL	0.990	0.256	0.268	0.266	104–76–7
ETHYL-(2)-PROPYL-(3) ACROLEIN (M)	0.977	0.999	0.999	0.257	645–62–5
ETHYLACETATE	0.987	0.722	1.000	0.404	141–78–6
ETHYLAMINE	0.358	0.711	0.999	0.280	75–04–7
ETHYLBENZENE	0.990	1.204	1.000	0.828	100–41–4
ETHYLENE	0.990	1.187	1.000	0.980	74–85–1
ETHYLENE DIAMINE	0.963	0.012	0.022	0.241	107–15–3
ETHYLENE DIBROMIDE	0.990	0.537	0.999	0.565	106–93–4
ETHYLENE GLYCOL DIMETHYL ETHER	0.905	0.601	0.860	0.316	110–71–4
ETHYLENE GLYCOL MONOBUTYL ETHER ACETATE	0.772	0.031	0.043	0.067	
ETHYLENE GLYCOL MONOMETHYL ETHER ACETATE	0.285	0.055	0.093	0.048	110–49–6
ETHYLENE OXIDE	0.986	0.712	1.000	0.503	75–21–8
ETHYLETHOXY PROPIONATE	0.940	0.491	0.577	0.213	
ETHYLHEXYL HEXANOL 2	0.990	0.065	0.064	0.125	
ETHYLHEXYLACRYLATE,2-	0.990	0.925	0.992	0.705	103–11–7
FENCHONE,d- (M)	0.990	0.149	0.149	0.406	4695–62–9
FLUORANTHENE	0.990	0.049	0.039	0.656	206–44–0
FLUORENE	0.990	0.965	0.774	0.314	86–73–7
FLUOROMETHANE	0.990	1.130	1.000	0.873	
FLUOROURACIL,5- (M)	0.990	0.999	0.999	0.412	51–21–8
FORMYL FLUORIDE	0.990	0.848	1.000	0.577	
FREON 11, fluorotrichloromethane	0.990	1.053	1.000	0.954	
FREON 12 DICHLORODIFLUOROMETHANE	0.990	1.059	1.000	0.980	75–71–8

TABLE 2 OF APPENDIX J.—FR, FM, AND FE [1] VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25° C GREATER THAN OR EQUAL TO 0.1 Y/X ATMOSPHERE PER MOLE FRACTION—Continued

Compound	FR	Fm25D	Fm305	Fe [1]	CAS
FREON 12, dichlorodifluoromethane	0.990	1.059	1.000	0.980	
FREONS (M)	0.990	0.644	0.644	0.980	
FURAN	0.990	0.983	1.000	0.755	110–00–9
FURFURAL	0.990	0.288	0.334	0.354	98–01–1
FUROIC ACID (M)	0.990	0.794	0.794	0.480	88–14–2
GEOSMIN (M)	0.990	0.134	0.134	0.406	19700–21–
GLYOXAL	0.502	0.490	0.888	0.297	
GUANINE (M)	0.990	0.149	0.149	0.980	73–40–5
HEPTACHLOR	0.990	0.619	0.566	0.647	76–44–8
HEPTACHLOR EPOXIDE (M)	0.976	0.030	0.030	0.162	1024–57–3
HEPTANAL	0.990	0.942	0.991	0.407	
HEPTANE ISO	0.990	1.099	1.000	0.980	31394–54–
HEPTANE(-n)	0.990	1.085	1.000	0.980	142–82–5
HEXACHLOROBENZENE	0.990	1.047	0.966	0.643	118–74–1
HEXACHLOROBUTADIENE	0.990	0.937	0.883	0.855	87–68–3
HEXACHLOROCYCLOHEXANE (GAMMA ISOMER)	0.990	0.141	0.132	0.106	58–89–9
HEXACHLOROCYCLOPENTADIE NE	0.990	0.886	0.826	0.803	77–47–4
HEXACHLOROETHANE	0.990	0.515	0.499	0.852	67–72–1
HEXACHLOROPENTADIENE (M)	0.990	0.088	0.088	0.860	
HEXADECANE N (M)	0.990	0.112	0.112	0.980	544–76–3
HEXAFLUOROACETONE	0.990	0.968	1.000	0.980	
HEXAFLUOROPROPENE	0.990	1.080	1.000	0.980	116–15–4
HEXAMETHYLENEDIAMINE (M)	0.971	0.724	0.724	0.213	124–09–4
HEXAMETHYLENIMINE	0.520	0.923	0.989	0.109	
HEXANAL	0.990	0.928	0.997	0.400	
HEXANE(-n)	0.990	1.084	1.000	1.000	110–54–3
HEXANOL 2 ETHYL	0.942	0.256	0.268	0.134	104–76–7
HEXANOL-1	0.963	0.322	0.355	0.180	111–27–3
HEXEN-2-ONE 5	0.979	0.885	0.915	0.347	
HEXENE	0.990	1.119	1.000	0.980	
HEXYL ETHANOATE	0.990	0.865	0.998	0.475	
HEXYLAMINE	0.948	0.803	0.870	0.239	
HYDROFLUORIC ACID (M)	0.990	0.558	0.558	0.537	7664–39–3
HYDROGEN SULFIDE	0.990	0.333	1.000	0.882	
HYDROXY DIMETHYL ETHER (M)	0.990	0.999	0.999	0.874	
HYDROXY–1,3-CYCLOPENTADIENE 5 (M)	0.990	0.999	0.999	0.728	
HYDROXY–4-METHYLTETRAHYDROFURAN(M)	0.990	0.948	0.948	0.385	
HYDROXY–5-METHYLDIMETHYL PHTHALA (M)	0.990	0.113	0.113	0.980	
HYDROXY6METHYLPYRIDINE3 CARBOXYLI (M)	0.990	0.148	0.148	0.409	38116–61–
HYDROXYACETIC ACID	0.760	0.000	0.001	0.570	79–14–1
HYDROXYCYCLOHEXANONE 4 (M)	0.631	0.761	0.761	0.087	
HYDROXYDIMETHYL PHTHALATE 4 (M)	0.990	0.120	0.120	0.980	
HYDROXYMETHYL ACETYLENE (M)	0.990	0.999	0.999	0.980	
HYDROXYMETHYL ISOPROPYL KETONE (M)	0.990	0.999	0.999	0.662	
HYDROXYMETHYL, N-METHYLETHYL AMI (M)	0.990	0.999	0.999	0.980	
HYDROXYMETHYL-N-CHLOROMETHYLETHY (M)	0.990	0.838	0.838	0.980	
HYDROXYMETHYLPHENYL CARBAMATE N (M)	0.920	0.147	0.147	0.137	
HYDROXYMETHYLTHIOBENZENE (M)	0.990	0.320	0.320	0.790	
HYDROXYMETHYLVINYL ETHER (M)	0.990	0.490	0.490	0.905	
HYDROXYPENTANE 3 (M)	0.990	0.999	0.999	0.450	
INDANOL,5-(M)	0.990	0.128	0.128	0.980	1470–94–6
INDOLE (M)	0.990	0.708	0.708	0.980	120–72–9
IODOCOUMARAN 2 (M)	0.990	0.102	0.102	0.980	
ISOBUTANE	0.990	1.103	1.000	0.963	
ISOBUTYL ETHANOATE	0.990	0.786	1.000	0.486	
ISOBUTYLBENZENE	0.990	1.191	1.000	0.905	
ISOBUTYLENE	0.990	1.141	1.000	0.916	
ISOCYANO 4 METHYL BENZENE *	0.980	0.422	0.384	0.198	
ISODECANOL	0.932	0.165	0.158	0.099	
ISODECYL OCTYL ESTER	0.990	1.033	1.000	0.906	
ISOPENTANE	0.990	1.101	1.000	0.954	
ISOPENTYL ETHANOATE	0.990	0.852	0.999	0.487	
ISOPENTYL METHANOATE	0.990	0.941	0.997	0.503	
ISOPHORONE	0.616	0.525	0.506	0.108	78–59–1
ISOPROPYL AMINE	0.990	0.811	1.000	0.538	75–31–0
ISOPROPYL ETHER	0.019	0.939	1.000	0.730	108–20–3
ISOPROPYL METHANOATE	0.990	0.886	1.000	0.578	
ISOPROPYL METHANOATE	0.990	0.865	1.000	0.547	
ISOPROPYL PROPANOATE	0.990	0.825	1.000	0.487	
ISOXAZOLOL,5-(AMINOMETHYL)-3-(M)	0.990	0.760	0.760	0.980	2763–96–4
LINDANE hexachlorocyclohexane	0.990	1.063	1.000	0.703	

TABLE 2 OF APPENDIX J.—FR, FM, AND FE [1] VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25° C GREATER THAN OR EQUAL TO 0.1 Y/X ATMOSPHERE PER MOLE FRACTION—Continued

Compound	FR	Fm25D	Fm305	Fe [1]	CAS
MELAMINE (M)	0.990	0.554	0.554	0.980	108–78–1
MERCAPTOBENZOTHIAZOLE,2	0.990	0.844	1.000	0.641	
MERCURY (M)	0.990	0.125	0.125	0.854	7439–97–6
METHACRYLIC ACID	0.990	0.068	0.091	0.194	79–41–4
METHANE	0.990	1.067	1.000	0.980	74–82–8
METHANETHIOL (M)	0.990	0.999	0.999	0.731	74–93–1
METHANOL	0.317	0.433	0.855	0.168	67–56–1
METHAPYRILENE (M)	0.990	0.094	0.094	0.980	91–80–5
METHOXYACETIC ACID	0.593	0.005	0.010	0.064	625–45–6
METHOXYACETONITRILE (M)	0.990	0.999	0.999	0.382	1738–36–9
METHOXYCHLOR	0.990	0.085	0.081	0.333	72–43–5
METHYL 1-PENTENE 2	0.990	1.125	1.000	0.980	763–29–1
METHYL 2-PROPYL ETHER	0.990	0.976	1.000	0.537	
METHYL ACETATE	0.989	0.590	0.906	0.454	79–20–9
METHYL ACRYLATE	0.990	0.748	1.000	0.478	96–33–3
METHYL ACRYLONITRILE (M)	0.990	0.999	0.999	0.980	126–98–7
METHYL AMINE	0.990	0.516	0.992	0.877	74–89–5
METHYL AMINOACETYLENE (M)	0.990	0.999	0.999	0.980	
METHYL AZIRIDINE 2	0.900	0.838	1.000	0.360	
METHYL BENZOATE	0.692	0.924	0.981	0.168	
METHYL BENZYL ALCOHOL 4	0.917	0.058	0.056	0.154	
METHYL BIPHENYL (-p) (M)	0.990	0.141	0.141	0.819	644–08–6
METHYL BUTANOATE	0.990	0.775	1.000	0.413	
METHYL CHLORIDE	0.990	1.040	1.000	0.840	74–87–3
METHYL CHLOROACETAMIDE N (M)	0.863	0.872	0.872	0.137	
METHYL CHLOROCARBONATE (M)	0.990	0.999	0.999	0.980	79–22–1
METHYL CHOLANTHRENE 3	0.990	1.234	0.990	0.322	56–49–5
METHYL COUMARAN 2 (M)	0.990	0.145	0.145	0.811	607–71–6
METHYL CYCLOHEXANE	0.990	1.107	1.000	0.980	108–87–2
METHYL ETHER dimethyl ether	0.990	0.698	1.000	0.730	115–10–6
METHYL ETHYL ETHER	0.990	0.791	1.000	0.617	
METHYL ETHYL KETONE, 2 butanone	0.958	0.872	0.990	0.477	78–93–3
METHYL FORMATE	0.590	0.535	0.997	0.548	107–31–3
METHYL HEXANOATE	0.990	0.843	1.000	0.441	
METHYL IODIDE	0.990	0.354	1.000	0.711	74–88–4
METHYL ISOAMYL KETONE (M)	0.990	0.761	0.761	0.318	110–12–3
METHYL ISOBUTYL KETONE	0.990	0.933	0.979	0.529	108–10–1
METHYL ISOCYANATE	0.990	0.272	1.000	0.870	624–83–9
METHYL ISOPROPYL KETONE	0.986	0.922	0.991	0.523	563–80–4
METHYL MERCAPTAN	0.990	0.333	1.000	0.719	
METHYL METHACRYLATE	0.986	0.801	0.999	0.366	80–62–6
METHYL MORPHOLINE	0.435	0.365	0.475	0.078	
METHYL NAPTHALENE (1-)	0.990	1.204	0.973	0.512	90–12–0
METHYL NAPTHALENE (-12)	0.990	1.219	0.986	0.246	91–57–6
METHYL OCTANOATE	0.990	0.888	1.000	0.524	
METHYL PENTANOATE	0.990	0.813	1.000	0.417	
METHYL PEROXIDE	0.587	0.024	0.070	0.159	
METHYL PROPANOATE	0.985	0.724	1.000	0.431	
METHYL PROPENE 2 (M)	0.990	0.999	0.999	0.980	115–11–7
METHYL PROPYL ETHER	0.990	0.848	1.000	0.598	
METHYL TERTIARY-BUTYL ETHER	0.990	0.911	1.000	0.573	1634–04–4
METHYL TETRAHYDROFURAN 2	0.990	0.914	1.000	0.357	
METHYL THIOURACIL (M)	0.990	0.283	0.283	0.753	56–04–2
METHYL-1,3-CYCLOPENTADIENE 5 (M)	0.990	0.999	0.999	0.924	26519–91–
METHYL-2,3,4-TRIHYDROQUINOLINE N (M)	0.912	0.218	0.218	0.137	
METHYL-2-AMINOETHYLAMINE (M)	0.990	0.999	0.999	0.871	109–81–9
METHYL-2-HYDROXYETHYLAMINE (M)	0.578	0.999	0.999	0.081	109–83–1
METHYL-3-ACETYLCYCLOPENTADIENE 1 (M)	0.990	0.897	0.897	0.754	
METHYL-3-NITROBENZYL ALCOHOL 4 (M)	0.767	0.141	0.141	0.103	40870–59–
METHYL-4-NITROBENZYL ALCOHOL 2 (M)	0.568	0.141	0.141	0.079	23876–13–
METHYL-5-THIOACETYLDIHYDRO1,3THI (M)	0.994	0.146	0.146	0.980	
METHYLACETONITRILE (M)	0.990	0.999	0.999	0.980	75–86–5
METHYLBUTADIENE (isoprene)	0.990	1.176	1.000	0.980	
METHYLBUTYLAMINE	0.809	0.791	0.883	0.178	
METHYLCYCLOPENTANE	0.990	1.109	1.000	0.980	
METHYLENE CHLORIDE, dichloromethane	0.990	1.017	1.000	0.770	75–09–2
METHYLFURAN 2 (M)	0.509	0.999	0.999	0.073	534–22–5
METHYLISOBORNEOL,2-(M)	0.990	0.141	0.141	0.794	NA
METHYLPHENYL CARBAMATE N (M)	0.906	0.320	0.320	0.137	
METHYL-PHENYLETHYLAMINE N (M)	0.990	0.401	0.401	0.587	589–08–2
METHYL-p'-METHYLTRIPHENYL PHOSPH (M)	0.990	0.079	0.079	0.862	

TABLE 2 OF APPENDIX J.—FR, FM, AND FE [1] VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25° C GREATER THAN OR EQUAL TO 0.1 Y/X ATMOSPHERE PER MOLE FRACTION—Continued

Compound	FR	Fm25D	Fm305	Fe [1]	CAS
METHYLSTYRENE (-4)	0.990	1.217	1.000	0.767	98–93–9
METHYLTIN TRICHLORIDE (M)	0.470	0.105	0.105	0.070	993–16–8
METHYL-TRIHYDRO-1,3-THIAZOLE 4 (M)	0.990	0.914	0.914	0.316	
MITOMYCIN C (M)	0.990	0.058	0.058	0.980	50–07–7
MNNG (M)	0.990	0.199	0.199	0.980	70–25–7
MONOCHLORODIFLUOROMETHANE	0.990	1.023	1.000	0.990	75–45–6
MORPHOLINE	0.990	0.148	0.207	0.437	110–91–8
MUSTARD GAS (M)	0.990	0.146	0.146	0.406	505–60–2
NAPHTHALENE	0.990	1.239	0.994	0.506	
NAPHTHALENE ACETIC ACID 2 METHYL,	10.99	0.863	0.830	0.567	
NAPHTHOQUINONE-1,4 (M)	0.958	0.146	0.146	0.164	130–15–4
NICKEL CYANIDE (M)	0.990	0.817	0.817	0.284	557–19–7
NITRO m XYLENE, 2	0.990	0.779	0.923	0.455	
NITRO-4-METHYLBENZOATE 3 (M)	0.990	0.128	0.128	0.980	
NITROANILINE P	0.990	0.000	0.000	0.411	100–01–6
NITROBENZENE	0.808	0.305	0.394	0.228	98–95–3
NITROBENZENESULFONYL CHLORIDE P (M)	0.990	0.114	0.114	0.458	98–74–8
NITROBENZYL ALCOHOL P (M)	0.990	0.149	0.149	0.356	619–73–8
NITROBIPHENYL,4-	0.976	0.044	0.046	0.075	92–93–3
NITROCELLULOSE (M)	0.990	0.000	0.000	0.558	9004–70–0
NITROETHANE	0.225	0.412	0.964	0.161	
NITROGEN MUSTARD N-OXIDE (M)	0.990	0.139	0.139	0.794	126–85–2
NITROMETHANE	0.990	0.255	0.954	0.883	75–52–5
NITROMETHYLBENZENE	0.990	0.463	0.570	0.270	
NITROPROPANE 2	0.985	0.531	0.989	0.437	79–46–9
NITROSOBENZYL ALCOHOL 4 (M)	0.901	0.405	0.405	0.136	
NITROSOPYRROLIDINE N (M)	0.990	0.997	0.997	0.980	930–55–2
NITROTOLUENE (-p)	0.990	0.339	0.417	0.45199–	99–0
NITROTOLUENE, m	0.990	0.475	0.585	0.279	
NITROTOLUENE, o	0.990	0.534	0.657	0.296	
NITROTOLUENE, o	0.988	0.534	0.657	0.266	
NONANAL	0.990	0.938	0.959	0.558	
NONANOL, n	0.856	0.099	0.103	0.091	
NONYLPHENOL(M)	0.990	0.115	0.115	0.794	25154–52
OCTAMETHYLPYROPHOSPHORAMIDE (M)	0.990	0.082	0.082	0.980	152–16–9
OCTANAL	0.990	0.946	0.979	0.465	
OCTANE	0.990	1.086	1.000	0.980	111–65–9
OCTANOL 1	0.990	0.184	0.195	0.240	111–87–5
OCTANOL 2	0.983	0.381	0.398	0.136	
OCTANOL 3	0.990	0.514	0.536	0.104	
OCTANOL 4	0.990	0.446	0.466	0.118	
OIL (decane)	0.990	1.088	1.000	0.951	
OXAMIC ACID (M)	0.990	0.999	0.999	0.317	471–47–6
PARABROMOPHENOL (M)	0.925	0.139	0.139	0.135	106–41–2
PARAFORMALDEHYDE (M)	0.990	0.000	0.000	0.558	30525–89-
PARALDEHYDE	0.795	0.717	0.991	0.232	123–63–7
PCB 1016 (monochlorobiphenyl)	0.990	1.204	1.000	0.345	12674–11-
PCB 1221 (monochlorobiphenyl)	0.990	1.204	1.000	0.418	11104–28-
PCB 1232 (dichlorobiphenyl)	0.990	1.177	1.000	0.543	11141–16-
PCB 1242 (trichlorobiphenyl)	0.990	1.075	0.929	0.488	53469–21-
PCB 1248 (quatrochlorobiphenyl)	0.990	1.142	1.000	0.640	12672–29-
PCB 1254(pentachlorobipheny l	0.990	0.698	0.618	0.813	11097–69-
PCB 1260 (hexachlorobiphenyl)	0.990	0.504	0.450	0.791	11096–82-
PCB'S (Aroclors)	0.990	1.142	1.000	0.507	
PENTACHLOROBENZENE	0.990	1.091	1.000	0.796	608–93–5
PENTACHLOROETHANE	0.990	0.991	0.966	0.877	76–01–7
PENTACHLORONITROBENZENE	0.990	0.774	0.839	0.405	
PENTACHLOROPHENOL	0.990	0.092	0.090	0.298	87–86–5
PENTADIENE 1,2	0.990	1.191	1.000	0.855	
PENTAERYTHRITOL TETRANITRATE (M)	0.976	0.067	0.067	0.162	78–11–5
PENTANAL	0.990	0.904	0.999	0.406	
PENTANE	0.990	1.082	1.000	0.925	
PENTYL PROPANOATE	0.990	0.868	1.000	0.537	
PENTYLAMINE	0.903	0.822	0.917	0.254	
PENTYLBENZENE	0.990	1.173	1.000	0.766	
PENTYLCYCLOPENTANE	0.990	1.103	1.000	0.980	
PERCHLOROMETHYL MERCAPTAN (M)	0.990	0.132	0.132	0.980	594–42–3
PERYLENE (M)	0.990	0.099	0.099	0.853	198–55–0
PHENANTHRENE	0.990	0.279	0.222	0.193	85–01–8
PHENOL,3-(1,1-DIMETHYLETHYL)-(M)	0.990	0.558	0.558	0.794	585–34–2
PHENOTHIAZINE (M)	0.990	0.125	0.125	0.874	92–84–2

TABLE 2 OF APPENDIX J.—FR, FM, AND FE [1] VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25° C GREATER THAN OR EQUAL TO 0.1 Y/X ATMOSPHERE PER MOLE FRACTION—Continued

Compound	FR	Fm25D	Fm305	Fe [1]	CAS
PHENYL ISOCYANATE (M)	0.990	0.674	0.674	0.855	103–71–9
PHENYLACETIC PEROXIDE (M)	0.917	0.149	0.149	0.137	
PHENYLCYCLOHEXANONE 4	0.990	1.029	0.914	0.826	4894–75–1
PHENYLHYDRAZINE (M)	0.990	0.860	0.860	0.314	100–63–0
PHENYLPHENOL P	0.990	0.001	0.001	0.710	92–69–3
PHENYLTHIOUREA (M)	0.990	0.149	0.149	0.863	103–85–5
PHOSGENE (decomposes)	0.990	0.868	1.000	0.872	75–44–5
PHOSPHINE	0.990	0.213	1.000	0.996	7803–51–2
PHTHALATE, DI N BUTYL–	0.971	0.006	0.006	0.095	
PHTHALATE, DI N OCTYL	0.990	0.042	0.044	0.574	
PHTHALIC ACID	0.990	0.714	0.924	0.858	88–99–3
PHTHALIMIDE	0.990	0.850	0.957	0.854	85–41–6
PICOLINE(2-) (M)	0.990	0.999	0.999	0.398	109–06–8
PINENE(alpha-)	0.990	1.165	1.000	0.890	80–56–8
PIPERAZINE	0.990	0.031	0.042	0.339	110–85–0
POLYCYCLIC KETONE O (M)	0.990	0.000	0.000	0.948	
PROPANAL	0.902	0.813	1.000	0.436	
PROPANE	0.990	1.075	1.000	0.880	74–98–6
PROPANE), 2,2'-OXYBIS(2-CHLORO-(M)	0.990	0.138	0.138	0.980	39638–32
PROPANOIC ACID	0.104	0.105	0.163	0.064	79–09–4
PROPANOL	0.595	0.305	0.421	0.185	
PROPANOL ISO	0.451	0.740	0.926	0.190	67–63–0
PROPENAL	0.943	0.855	1.000	0.487	
PROPENE	0.990	1.144	1.000	0.980	
PROPENYL BENZENE	0.990	1.217	1.000	0.860	
PROPIONALDEHYDE	0.990	0.813	0.999	0.406	123–38–6
PROPIONIC ACID	0.990	0.066	0.102	0.381	79–09–4
PROPIONITRILE (M)	0.990	0.999	0.999	0.580	107–12–0
PROPYL ACETATE ISO	0.990	0.786	1.000	0.453	108–21–4
PROPYL BUTANOATE	0.990	0.843	1.000	0.475	
PROPYL ETHER	0.990	0.921	1.000	0.716	111–43–3
PROPYL METHANOATE	0.990	0.714	1.000	0.506	
PROPYL PROPANOATE	0.990	0.813	1.000	0.446	
PROPYL THIOURACIL (M)	0.990	0.140	0.140	0.921	51–52–5
PROPYL(-n) ACETATE	0.990	0.773	0.999	0.448	109–60–4
PROPYL(-n) BENZENE	0.990	1.191	1.000	0.781	103–65–1
PROPYL-3-METHOXY PYRAZINE,2-ISO(M)	0.990	0.149	0.149	0.980	25773–40-
PROPYLAMINE	0.563	0.778	0.971	0.249	107–10–8
PROPYLCYCLOPENTANE	0.990	1.105	1.000	0.980	
PROPYLENE	0.990	1.144	1.000	0.980	115–07–1
PROPYLENE CHLOROHYDRIN	0.274	0.338	0.383	0.069	
PROPYLENE OXIDE	0.990	0.841	1.000	0.600	75–56–9
PROPYLENIMINE 1,2 2 methyl aziri	0.609	0.792	0.944	0.239	75–55–8
PROPYN-1-OL 2(PROPARLGYL)	0.550	0.271	0.321	0.225	107–19–7
PROPYNE	0.990	1.200	1.000	0.853	
PYRENE	0.990	0.046	0.036	0.113	129–00–0
PYRIDINE	0.956	0.608	0.600	0.255	110–86–1
PYRROLIDINE	0.198	0.814	0.936	0.072	
QUINALDINE (M)	0.990	0.999	0.999	0.853	91–63–4
RESERPINE (M)	0.990	0.000	0.000	0.648	50–55–5
s ACETYLMERCAPTOSUCCINIC ACID	0.318	0.030	0.050	0.069	
S4CHL.CYCLOHEX.00DIMETH .PHOS.DIT(M)	0.990	0.052	0.052	0.342	
SACCHARIN (M)	0.990	0.133	0.133	0.850	81–07–2
SAFROLE (M)	0.990	0.144	0.144	0.406	94–59–7
sec BUTYLBENZENE	0.990	1.187	1.000	0.860	
SILVEX	0.990	1.106	1.000	0.774	93–72–1
SODIUM DODECYL SULFATE (M)	0.988	0.081	0.081	0.195	151–21–3
SODIUM DODECYLBENZENE SULFONATE (M)	0.908	0.083	0.083	0.121	25155–30-
STREPTOZOTOCIN (M)	0.990	0.092	0.092	0.980	18883–66-
STYRENE	0.990	1.229	1.000	0.800	100–42–5
STYRENE OXIDE	0.990	0.883	0.830	0.341	
SULFIDE (M)	0.990	0.999	0.999	0.649	
TAMARON (METHAMIDIPHOS)	0.306	0.430	0.672	0.091	
TARS(M)	0.990	0.025	0.025	0.642	
t-BUTYL HYDROPEROXIDE	0.497	0.289	0.404	0.199	75–91–2
TERPINEOL, ALPHA	0.990	1.008	0.984	0.473	
tert BUTANOL	0.630	0.856	0.989	0.231	
tert-AMYLBENZENE	0.990	1.173	1.000	0.870	
tert-BUTYLBENZENE	0.990	1.192	1.000	0.855	
TETRACHLOROAQUINONE (M)	0.990	0.102	0.102	0.980	
TETRACHLOROBENZENE(1,2,3,4)	0.990	1.101	1.000	0.700	634–66–2

TABLE 2 OF APPENDIX J.—FR, FM, AND FE [1] VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25° C GREATER THAN OR EQUAL TO 0.1 Y/X ATMOSPHERE PER MOLE FRACTION—Continued

Compound	FR	Fm25D	Fm305	Fe [1]	CAS
TETRACHLOROBENZENE(1,2,3,5)	0.990	1.101	1.000	0.732	634–90–2
TETRACHLOROBENZENE(1,2,4,5)	0.990	1.101	1.000	0.732	95–94–3
TETRACHLORODIBENZOFURAN (2,3,7,8) (M)	0.990	0.072	0.072	0.332	51207–31-
TETRACHLORODIBENZO-p-DIOXIN(2,3,7,8)	0.990	0.109	0.101	0.173	1746–01–6
TETRACHLOROETHANE(1,1,1,2) (M)	0.990	0.141	0.141	0.459	630–20–6
TETRACHLOROETHANE(1,1,2,2)	0.990	1.015	0.999	0.397	79–34–5
TETRACHLOROETHENE	0.990	1.048	1.000	0.917	127–18–4
TETRACHLOROPHENOL(2,3,4,6)	0.447	1.024	1.000	0.091	58–90–2
TETRACHLOROPHENOL(2,3,5,6)	0.990	0.010	0.010	0.980	935–95–5
TETRACHLOROPROPENE(1,1,2,3) (M)	0.990	0.135	0.135	0.831	10436–39-
TETRADECANE	0.990	1.089	1.000	0.896	629–59–4
TETRAETHYL LEAD	0.990	0.958	0.889	0.980	78–00–2
TETRAETHYLENE GLYCOL (M)	0.892	0.128	0.128	0.117	112–60–7
TETRAETHYLENE PENTANE	0.990	1.183	1.000	0.881	
TETRAETHYLPYROPHOSPHATE (M)	0.990	0.080	0.080	0.980	107–49–3
TETRAFLUOROETHENE	0.990	1.080	1.000	0.980	
TETRAFLUOROMETHANE	0.990	1.037	1.000	0.980	
TETRAHYDROBENZALDEHYDE	0.912	0.635	0.641	0.213	
TETRAHYDROFURAN	0.830	0.860	1.000	0.322	109–99–9
TETRAHYDRONAPHTHALENE,1,2,3,4-(M)	0.887	0.452	0.452	0.794	119–64–2
TETRAHYDROPYRAN	0.980	0.898	1.000	0.381	142–68–7
TETRAHYDROTHIOPHENE	0.990	0.692	1.000	0.566	
TETRALIN	0.990	1.189	1.000	0.632	
TETRANITROMETHANE	0.990	0.267	1.000	0.852	509–14–8
THIOACETAMIDE (M)	0.990	0.999	0.999	0.375	62–55–5
THIOBENZYL ALCOHOL P (M)	0.887	0.588	0.588	0.136	100–53–8
THIOBISETHANE, 1,1'	0.990	0.692	1.000	0.763	
THIOCYANATE (TOTAL AS SCN-) (M)	0.990	0.642	0.642	0.894	NA
THIOMETHANOL (M)	0.990	0.999	0.999	0.499	74–93–1
THIOPHENOL (M)	0.659	0.826	0.826	0.933	108–98–5
THIOPROPIONAMIDE 2 (M)	0.696	0.948	0.948	0.097	
THIOUREA	0.892	0.011	0.024	0.472	62–56–6
THIRAM (M)	0.990	0.105	0.105	0.980	137–26–8
THYMINE (M)	0.990	0.556	0.556	0.806	65–71–4
TOLUENE	0.990	1.215	1.000	0.804	108–88–3
TOLUENE24DIAZOBIS-METATOLUENEDIA(M)	0.986	0.011	0.011	0.188	
TOLUENESULFONYL CHLORIDE	0.604	0.046	0.047	0.068	
TOLUIC ALDEHYDE	0.990	0.513	0.478	0.382	122–78–1
TOLUIDINE (-0)	0.459	0.159	0.152	0.052	95–53–4
TOLUIDINE HYDROCHLORIDE,o-(M)	0.990	0.258	0.258	0.980	636–21–5
TOLUIDINE P	0.850	0.274	0.262	0.208	106–49–0
TOXAPHENE	0.990	0.054	0.050	0.735	8001–35–2
trans 1,4 DIMETHYLCYCLOHEXANE	0.990	1.117	1.000	0.980	
trans 2 BUTENAL	0.387	0.911	1.000	0.267	
trans 2 HEPTENE	0.990	1.121	1.000	0.980	
trans 2 HEXENAL	0.856	0.963	1.000	0.295	
trans 2 OCTENAL	0.990	0.985	0.993	0.381	
trans, trans 2,4 HEXADIENAL	0.233	0.996	1.000	0.151	
TRIBROMOMETHYLPHOSPHATE (M)	0.980	0.052	0.052	0.169	
TRIBUTYL PHOSPHOROTRITHIOATE SSS	0.990	.	.	0.334	78–48–8
TRIBUTYL TIN ACETATE	0.990	0.929	0.980	0.789	
TRIBUTYLPHOSPHATE	0.990	1.073	0.988	0.980	126–73–8
TRICHLORO(1,1,2)TRIFLUO ROETHANE(M)	0.990	0.131	0.131	0.980	76–13–1
TRICHLORO–1,2,2-TRIFLUOROETHANE,1,1	0.990	1.033	1.000	0.980	76–13–1
TRICHLORO-1,3,5-TRIAZINE 2,4,6 (M)	0.990	0.133	0.133	0.552	108–77–0
TRICHLOROANISOLE 2,3,6 (M)	0.990	0.119	0.119	0.980	50375–10–
TRICHLOROBENZENE 1,2,3	0.990	1.114	1.000	0.808	87–61–6
TRICHLOROBENZENE 1,2,4	0.990	1.114	1.000	0.637	120–82–1
TRICHLOROBENZENE 1,3,5	0.990	1.114	1.000	0.877	108–70–3
TRICHLOROBUTANE 1,2,3 (M)	0.990	0.144	0.144	0.980	18338–40–
TRICHLOROETHANE 1,1,1	0.990	1.037	1.000	0.913	71–55–6
TRICHLOROETHANE 1,1,2	0.990	1.025	1.000	0.597	79–00–5
TRICHLOROETHYLENE	0.990	1.053	1.000	0.866	79–01–6
TRICHLOROFLUOROMETHANE	0.990	1.027	1.000	0.968	75–69–4
TRICHLOROPHENOL 2,4,5	0.964	0.111	0.108	0.086	95–95–4
TRICHLOROPHENOL 2,4,6	0.990	0.135	0.132	0.167	88–06–2
TRICHLOROPROPANE 1,1,1	0.990	1.048	1.000	0.897	7789–89–1
TRICHLOROPROPANE(1,1,2)	0.990	1.037	1.000	0.897	598–77–6
TRICHLOROPROPANE(1,2,2)	0.990	1.047	1.000	0.897	3175–23–3
TRICHLOROPROPANE(1,2,3)	0.990	1.048	1.000	0.894	96–18–4
TRICHLOROPROPENE (1,1,2)(M)	0.990	0.228	0.228	0.795	

TABLE 2 OF APPENDIX J.—FR, FM, AND FE [1] VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25° C GREATER THAN OR EQUAL TO 0.1 Y/X ATMOSPHERE PER MOLE FRACTION—Continued

Compound	FR	Fm25D	Fm305	Fe [1]	CAS
TRICOSANE N(M)	0.990	0.133	0.133	0.301	629–50–5
TRIETHYLAMINE	0.990	0.937	1.000	0.379	121–44–8
TRIETHYLENE GLYCOL(M)	0.846	0.150	0.150	0.111	112–27–6
TRIETHYLPHOSPHOROTHIOAT E,o,o,o-(M)	0.989	0.126	0.126	0.794	126–68–1
TRIFLUOROETHANE(1,1,1)	0.990	1.059	1.000	0.980	
TRIFLUOROMETHANE	0.990	1.057	1.000	0.980	
TRIFLURALIN	0.990	0.086	0.116	0.291	
TRIISOBUTYLENE	0.990	1.117	1.000	0.980	
TRIISOPROPYLAMINE	0.990	1.026	1.000	0.715	
TRIMELLITIC ANHYDRIDE (M)	0.629	0.129	0.129	0.087	552–30–7
TRIMETHYL BENZENE, 123	0.990	1.200	1.000	0.713	
TRIMETHYL-4-NITROANILINE 2,3,5 (M)	0.990	0.135	0.135	0.831	
TRIMETHYLAMINE	0.990	0.811	1.000	0.464	75–50–3
TRIMETHYLBENZENE (1,3,5)	0.990	1.200	1.000	0.766	108–67–3
TRIMETHYLPENTANE 2,2,4	0.990	1.116	1.000	1.000	540–84–1
TRIMETHYLSILANOL	0.990	0.533	1.000	0.980	
TRINITROBENZENE,sym-(M)	0.990	0.118	0.118	0.712	99–35–4
TRINITROTOLUENE(2,4,6)	0.223	0.004	0.009	0.120	118–96–7
TRIPHENYL PHOSPHINE (M)	0.990	0.094	0.094	0.321	603–35–0
TRIPHENYLMETHANE (M)	0.990	0.103	0.103	0.980	516–73–3
TRIPHENYLPHOSPHINE NICKEL CARBONM)	0.990	0.037	0.037	0.722	
TRIS (1-AZIRIDINYL) PHOSPHINESU(M)	0.990	0.130	0.130	0.379	52–24–4
TRIS (2,3-DIBROMOPROPYL)PHOSPHA(M)	0.990	0.000	0.000	0.980	126–72–7
TRISODIUM NITRILOTRIACETATE (M)	0.990	0.128	0.128	0.980	5064–31–3
TRYPAN BLUE(M)	0.990	0.000	0.000	0.853	72–57–1
URACIL (M)	0.990	0.794	0.794	0.857	66–22–8
URACIL MUSTARD (M)	0.990	0.099	0.099	0.853	66–75–1
UREA	0.990	0.016	0.030	0.582	57–13–6
URETHANE	0.990	0.024	0.039	0.370	51–79–6
VALERIC ACID (M)	0.990	0.963	0.963	0.287	109–52–4
VINYL ACETATE	0.990	0.748	1.000	0.592	108–05–4
VINYL ACETYLENE	0.990	1.232	1.000	0.890	
VINYL BROMIDE	0.990	0.629	1.000	0.849	
VINYL CHLORIDE	0.990	1.081	1.000	0.971	75–01–4
VINYL DIHYDROPYRAN	0.990	0.935	1.000	0.554	
VINYL METHYL ETHER	0.990	0.831	1.000	0.590	
VINYLCYCLOHEXENE 4(M)	0.990	0.860	0.860	0.980	100–40–3
VINYLIDENE CHLORIDE	0.990	1.061	1.000	0.889	75–35–4
XYLENE	0.990	1.206	1.000	0.788	1330–20–7
XYLENE(-m)	0.990	1.206	1.000	0.821	108–38–3
XYLENE(-o)	0.990	1.206	1.000	0.787	95–47–6
XYLENE(-p)	0.990	1.206	1.000	0.824	106–67–9
XYLIDINE dimethylaniline	0.606	0.131	0.124	0.074	
XYLYL CHLORIDE M (M)	0.990	0.310	0.310	0.592	620–19–9
XYLYL CHLORIDE O (M)	0.990	0.310	0.310	0.592	552–45–4

* Molecular structure only approximate.
(M) fraction measured (fm) estimated from Mwt correlation.
[1] The Fe values listed in Table 2 are Fe values for emissions from both the individual drain system and the treatment process. Use these Fe values with Section 2.5.1).

TABLE 3 OF APPENDIX J—FE VALUES FOR EMISSIONS FROM BOTH THE INDIVIDUAL DRAIN SYSTEM AND THE TREATMENT PROCESS

[Use with section 2.5.1]

Henry's Law Constant	Fe Value
0.00025	0.001
0.00051	0.002
0.00076	0.003
0.00127	0.005
0.00178	0.007
0.00254	0.010
0.00381	0.015
0.00508	0.020
0.00635	0.25
0.00762	0.030
0.00890	0.035
0.01017	0.040
0.01144	0.045
0.02327	0.050

TABLE 3 OF APPENDIX J—FE VALUES FOR EMISSIONS FROM BOTH THE INDIVIDUAL DRAIN SYSTEM AND THE TREATMENT PROCESS—Continued

[Use with section 2.5.1]

Henry's Law Constant	Fe Value
0.07862	0.060
0.13396	0.070
0.18931	0.080
0.24465	0.090
0.30	0.10
0.54	0.11
0.77	0.12
01.005	0.13
1.24	0.14
1.48	0.15
1.71	0.16
1.94	0.17
2.18	0.18
2.42	0.19
2.65	0.20
2.88	0.21
3.12	0.22
3.36	0.23
3.59	0.24
3.82	0.25
4.06	0.26
4.30	0.27
4.53	0.27
4.53	0.28
4.76	0.29
5	0.30
6.1	0.31
8.3	0.31
10.5	0.35
12.7	0.37
14.9	0.39
17.1	0.41
19.3	0.43
22.4	0.45
27.9	0.47
33.4	0.49
39	0.51
44.5	0.53
50	0.55
83.3	0.57
116.7	0.59
150	0.61
183.3	0.63
216.7	0.65
250	0.67
283.3	0.69
316.7	0.71
350	0.73
383.3	0.75
416.7	0.77
450	0.79
483.3	0.81
516.7	0.83
550	0.85
1003.8	0.87
1457.5	0.89
1911.5	0.91
2365.4	0.93
2819.2	0.95
3273.1	0.97
3500	0.98

TABLE 4 OF APPENDIX J—FET VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25 °C GREATER THAN OR EQUAL TO 0.1 (Y/X) ATMOSPHERE PER MOLE FRACTION

[Use with section 2.5.3]

Compound	Y/X	Fet	CAS
1 BROMO 2 CHLORO 2 BUTENE	311.66	0.544	
1 BUTYENE	1048.21	0.733	
1 ETHYL 4 METHYLBENZENE	277.78	0.511	
1 HEPTANOL	1.03	0.186	
1 HEPTYNE	3703.67	0.654	
1 HEXYNE	2222.20	0.675	
1 ISOCYANO 3-METHYLBENZENE	1.54	0.210	
1 ISOPROPYL 4 METHYLBENZENE	427.35	0.495	
1 METHYLCYCLOHEXENE	4273.46	0.664	
1 METHYLNAPHTHALENE	14.25	0.325	
1 NONYNE	8051.45	0.603	
1 OCTENE	50505.00	0.729	
1 OCTYNE	4629.58	0.624	
1 PENTYNE	1355.00	0.699	
1,1 DIETHOXYETHANE	5.56	0.320	
1,1,3 TRIMETHYLCYCLOPENTANE	86805.00	0.802	
1,1-DIFLUOROETHANE	1133.78	0.699	
1,2 DIETHOXYETHANE	3.47	0.309	
1,2,4,5 TETRAMETHYLBENZENE	1388.88	0.512	
1,3-DIOXOLANE	1.36	0.232	646–06–0
1,4 PENTADIENE	6613.69	0.742	
1,5 HEXADIENE	7507.43	0.702	
1-NITROPROPANE	4.63	0.374	
1-PENTANOL	69.44	0.576	
1-PENTENE	22222.00	0.812	
1-PROPOXY 2-PROPANOL	0.13	0.046	
2 BUTEN 1 0L	0.19	0.095	
2 HEPTANONE	8.05	0.356	
2 METHYL 1 BUTANOL	0.78	0.201	
2 METHYL 2 BUTENE	12346.00	0.782	
2 METHYL 2 PENTANOL	1.79	0.257	
2 METHYL 3 PENTANOL	1.92	0.241	
2 METHYLHEXANE C7H16	29239.00	0.737	
2 METHYLNAPHTHALENE	22.22	0.344	
2 NONANONE	20.58	0.366	
2 OCTANONE	10.48	0.348	
2 PENTANONE	3.47	0.350	
2 PENTENE	12920.00	0.779	
2 PROPYLBENZENE	71.22	0.435	
2 UNDECANONE	34.72	0.353	
2-(1-METHOXY))-1-PROPANOL	0.26	0.080	
2,2 DIMETHYL PROPANOIC ACID	0.16	0.062	
2,2 DIMETHYLBUTANE C6H14	1700.00	0.654	
2,2 DIMETHYLPENTANE	173610.00	0.881	
2,2,5 TRIMETHYLHEXANE C9H20	191570.00	0.795	
2,3 DIMETHYL 1,3 BUTADIENE	2645.48	0.671	
2,3 DIMETHYLBUTANE C6H14	71224.00	0.856	
2,3 DIMETHYLBUTANOL	1.85	0.259	
2,3 DIMETHYLPENTANE C7H16	95784.00	0.835	
2,3,4 TRIMETHYLPENTANE C8H18	104820.00	0.793	
2,3-DIMETHYLPYRIDINE	0.40	0.110	
2,4 DIMETHYLPENTANE C7H16	163400.00	0.875	
2,4,5 T	1.00	0.000	93–76–5
2,4-DIMETHYLPYRIDINE	0.37	0.105	
2,5-DIMETHYLPYRIDINE	0.46	0.122	
2,6, DIMETHYL 2,5-HEPTADIEN 4-ONE	11.00	0.336	
2,6-DIMETHYL 2,5-HEPTADIEN 4-ONE *	4.17	0.278	
2,6-DIMETHYLPYRIDINE	0.56	0.137	
2-CHLORO 2-METHYLBUTANE	220.00	0.589	
2-ETHYL 3-METHOXYPYRAZINE	0.82	0.151	
2-ETHYLPYRAZINE	0.14	0.049	
2-ETHYLPYRIDINE	0.58	0.141	
2-FLUOROPROPANE	13423.00	0.818	
2-ISOBUTYL 3-METHOXYPYRAZINE	2.78	0.256	
2-ISOBUTYLPYRAZINE	0.28	0.071	
2-METHYL PENTANE C6H14	1670.00	0.651	
2-METHYLPYRAZINE	0.12	0.052	
2-PENTANOL	0.82	0.205	
3 METHYL 1 BUTENE	29239.00	0.832	

TABLE 4 OF APPENDIX J—FET VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25 °C GREATER THAN OR EQUAL TO 0.1 (Y/X) ATMOSPHERE PER MOLE FRACTION—Continued

[Use with section 2.5.3]

Compound	Y/X	Fet	CAS
3 METHYL PYRIDINE	0.43	0.131	
3 METHYLHEPTANE C8H18	205760.00	0.848	
3 METHYLHEXANE C7H16	132270.00	0.860	
3,3 DIMETHYLPENTANE C7H16	102880.00	0.844	
3,4-DIMETHYLPRYIDINE	0.21	0.068	
3,5-DIMETHYLPYRIDINE	0.37	0.105	
3-ETHYLPRYIDINE	0.58	0.141	
3-HEXANOL	2.78	0.294	
3-PENTEN-2-OL	1.01	0.230	
4 METHYL 1 PENTENE	34722.00	0.800	
4 METHYL 2 PENTANOL	2.53	0.264	
4 METHYL 2 PENTANONE	0.51	0.145	
4 METHYLOCTANE C9H20	555550.00	0.868	
4-ETHYLPYRIDINE	0.46	0.123	
4-METHYLPYRIDINE	0.33	0.109	
5 METHOXY 2 PENTANONE	0.67	0.142	
ACENAPHTHENE	428.33	0.498	83–32–9
ACENAPHTHYLENE	6.33	0.286	208–96–8
ACETAL	19.61	0.398	
ACETALDEHYDE	4.87	0.449	75–07–0
ACETATE (M)	400.00	0.504	
ACETIC ACID	0.31	0.120	64–19–7
ACETIC ANHYDRIDE	0.33	0.214	108–24–7
ACETONE	1.39	0.261	67–64–1
ACETONITRILE	1.11	0.333	75–05–8
ACETOPHENONE	0.51	0.127	96–86–2
ACETYL CHLORIDE	11.00	0.531	79–36–5
ACETYL DIETHYLMALONATE	1.08	0.156	
ACETYLENE	70.00	0.711	74–86–2
ACETYLFURAN 2*	6.11	0.3821	1192–62–7
ACETYLMETHYLPHTHALATE 4	0.94	0.114	
ACETYLPYRIDINE 3	16833.00	0.882	1122–54–9
ACIFLUORFEN	83.89	0.300	
ACROLEIN	4.57	0.393	107–02–8
ACRYLONITRILE	5.44	0.393	107–13–1
ADAMANTANE DICHLORIDE	57.78	0.392	
AFLATOXINS (M)	16.67	0.295	1402–68–2
ALDICARB	16.67	0.000	116–06–3
ALDRIN	27.56	0.269	509–00–2
ALKYLIMINE CARBOXYLIC ACID N, SUB (M)	0.56	0.089	
ALLYL ALCOHOL	1.00	0.276	107–18–6
ALLYL CHLORIDE	515.00	0.728	107–05–1
ALLYL ETHER, diallyl ether	125.55	0.535	
ALPHA METHYL STYRENE	328.33	0.588	98–83–9
ALPHA METHYL STYRENE DIMERS	655.55	0.370	
alpha-CHLORO-beta-METHYLNAPHTHALENE	490.55	0.441	86–52–2
ALPHA-HYDROXYACETALDEHYDE	5.28	0.515	
ALPHA-HYDROXYADIPIMIDE (M)	0.90	0.135	
AMINO-2-CHLOROTOLUENE 4	388.89	0.563	
AMINO-3-CHLORO-5-PHENYLCYCLOHEXA (M)	0.22	0.049	
AMINO-4-CHLORO-6-CYANOPYRIDINE 2 (M)	17.22	0.332	
AMINO-4′-CHLOROBIPHENYL 4 (M)	1398300.00	0.887	
AMINO-4-CHLOROPYRIDINE 2 (M)	176.68	0.463	1072–98–6
AMINO-4-NITROBENZYL ALCOHOL 2 (M)	0.34	0.072	
AMINO-4-NITROTOLUENE 2	422.77	0.621	99–55–8
AMINO-5-CHLOROPYRIDINE 2 (M)	14.28	0.342	1072–98–6
AMINOBENZOIC ACID (-p) (M)	0.22	0.058	150–13–0
AMINOCYCLOHEXANE	13.78	0.416	108–91–8
AMINOMETHYL-3-ISOXAZOLOL 5 (M)	4.17	0.287	2763–96–4
AMINOPHENOL (-o)	0.20	0.082	95–55–6
AMINOPHENOL (-p)	1.09	0.180	101–80–4
AMINO-p′-METHYLAZOBENZENE P (M)	588.88	0.476	
AMINOPROPIONITRILE 3 (M)	0.51	0.163	151–18–8
AMITROLE (M)	0.22	0.081	61–82–5
AMMONIA	18.22	0.732	7664–41–7
AMPHETAMINE (M)	7.50	0.305	60–15–1
AMYL ACETATE (-n)	25.78	0.313	628–63–7
ANETHOLE (M)	16.67	0.371	104–46–1
ANISOLE	231.48	0.584	100–66–3

TABLE 4 OF APPENDIX J—FET VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25 °C GREATER THAN OR EQUAL TO 0.1 (Y/X) ATMOSPHERE PER MOLE FRACTION—Continued

[Use with section 2.5.3]

Compound	Y/X	Fet	CAS
ANTHRACENE	39.68	0.384	120–12–7
ARAMITE (M)	16.67	0.292	140–57–8
AURAMINE (M)	10739.00	0.547	492–80–8
AZASERINE (M)	2.38	0.206	115–02–6
AZEPINE (M)	462.77	0.534	111–49–9
AZIRIDINE ethylene imine	25.22	0.630	151–56–4
BENXENEDICARBOXYLIC ACID DIHEPTYL E	128.33	0.296	
BENZ (c) ACRIDINE (M)	611.11	0.533	225–51–4
BENZAL CHLORIDE	411.66	0.616	98–87–3
BENZALDEHYDE	2.35	0.283	100–52–7
BENZALKONIUM CHLORIDE (M)	0.11	0.022	
BENZEN SULFONATE (M)	1555.54	0.602	
BENZENE	308.34	0.592	71–43–2
BENZETHONIUM CHLORIDE (M)	1.24	0.089	121–54–0
BENZIDINE DIHYDROCHLORIDE (M)	588880.00	0.936	531–85–1
BENZO (B) FLUORANTHENE	1.12	0.117	205–99–2
BENZO (j) FLUORANTHENE (M)	611.11	0.525	205–82–3
BENZODIOXANE-1,3 (M)	0.26	0.046	
BENZOFLUORANTHENE,3,4- (M)	611.11	0.368	205–99–2
BENZOFURAN 2,3	13.17	0.370	
BENZOIC ACID, 4 METHYL	0.38	0.093	
BENZONITRILE	0.76	0.170	100–47–0
BENZOPHENONE	506.11	0.454	119–61–9
BENZOPYRENE 3,4 (M)	7.00	0.250	50–32–8
BENZOQUINONE,p- (M)	400.00	0.750	106–51–4
BENZOTHIAZOLE*	7.50	0.341	95–16–9
BENZOTRICHLORIDE	54.50	0.409	98–07–7
BENZOYL CHLORIDE	10.44	0.391	98–88–4
BENZYL CHLORIDE	17.72	0.395	100–44–7
BENZYL METHYL ETHER	75.00	0.469	538–86–3
BHC,alpha-	227.22	0.412	319–84–6
BHC,beta-	638.88	0.472	319–85–7
BHC,delta-	75.56	0.340	319–86–8
BICYCLO(4,2,0) OCTA 1.3.5 TRIENE	307.22	0.561	
BICYCLO[2.2.1]-2,5-HEPTADIENE DI(M)	4388.85	0.681	
BIPHENYL	22.67	0.345	92–52–4
BIS (2-CHLOROETHOXY) METHANE	0.12	0.028	111–91–1
BIS(1,1,2,2-TETRACHLOROPROPYL) ETHE	2416600.00	0.872	
BIS(2-CHLOROETHYL)ETHER	0.72	0.162	111–44–4
BIS(2-CHLOROISOPROPYL)ETHER	6.11	0.295	108–60–1
BIS(CHLOROMETHYL)ETHER	5.02	0.421	542–88–1
BISPHENOL(A)	126.67	0.362	80–05–7
BROMACIL	7609700.00	0.631	
BROMO-(1)-CHLOROETHANE–2	9944300.00	0.995	107–04–0
BROMO-3-CHLOROBUTADIENE 2	469.44	0.590	
BROMO-4-CHLORO–6-CYANOBENZYL ALC(M)	1.05	0.136	
BROMO-4-CHLOROCYCLOHEXANE 1	5544.39	0.692	
BROMO-4-CYANOMETHYL BENZOATE 2 (M)	6666.60	0.646	
BROMO-4-CYANOMETHYL BENZOATE 3 (M)	1338.88	0.584	
BROMOACETONE	0.54	0.145	598–31–2
BROMOBENZENE	270.00	0.524	108–86–1
BROMOBENZYL ALCOHOL -(m)	0.21	0.046	15852–73–
BROMOBENZYL ALCOHOL -(o)	0.21	0.046	18982–34–
BROMOBENZYL ALCOHOL -(p)	0.21	0.046	873–75–6
BROMOCHLOROBENZENE P	13278000.00	0.963	106–39–8
BROMOCHLOROBENZYL ALCOHOL	0.46	0.069	
BROMOCHLOROMETHANE	1438900.00	0.992	74–97–5
BROMODICHLOROMETHANE	11389.00	0.796	75–27–4
BROMOETHYL ACETATE	23.22	0.458	927–68–4
BROMOETHYLENE	744440.00	0.990	543–60–2
BROMOFORM	29.56	0.397	75–25–2
BROMOMETHANE	381.06	0.698	74–83–9
BROMOPHENYL PHENYL ETHER,4–	4.27	0.217	101–55–3
BROMOPROPIONITRILE 3 (M)	678.71	0.605	2417–90–5
BROMOTOLUENE 4	133.89	0.454	106–38–7
BROMOURACIL,5-(M)	588880.00	0.942	51–20–7
BUTADIENE-(1,3)	3961.07	0.745	106–99–0
BUTANE	16167.00	0.826	106–97–8
BUTANEDINITRILE	0.50	0.182	110–61–2

TABLE 4 OF APPENDIX J—FET VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25 °C GREATER THAN OR EQUAL TO 0.1 (Y/X) ATMOSPHERE PER MOLE FRACTION—Continued

[Use with section 2.5.3]

Compound	Y/X	Fet	CAS
BUTANENITRILE (M)	1.53	0.266	109–74–0
BUTANOL ISO	0.12	0.065	78–83–1
BUTANOL(S)	0.71	0.253	78–92–2
BUTANOL-1	0.49	0.177	71–36–3
BUTENE	39682.00	0.884	
BUTYL ACETATE(-n)	9.11	0.368	123–86–4
BUTYL ACRYLATE	33.94	0.442	141–32–2
BUTYL BENZENE	4905.51	0.573	104–51–8
BUTYL BENZYL PHTHALATE	599.99	0.495	85–68–7
BUTYL CARBITOL	4505.51	0.687	112–34–5
BUTYL MERCAPTAN	12500.00	0.758	
BUTYL-3-METHOXY PYRAZINE,2-ISO (M)	10739.00	0.579	24683–00–
BUTYLAMINE	0.84	0.241	109–73–9
BUTYLBUTOXY PROPIONATE	4.20	0.224	
BUTYLENE GLYCOL-(1,3)	0.20	0.096	107–88–0
BUTYLISOBUTYRATE	399.44	0.597	
BUTYRALDEHYDE	14.33	0.490	123–72–8
BUTYRALDEHYDE ISO	8.17	0.438	78–84–2
c10 linear	396820.00	0.784	
c11 linear	1010100.00	0.799	
CACODYLIC ACID (M)	2.14	0.219	75–60–5
CAMPHENE (M)	75.56	0.483	79–92–5
CAPTAN	2.60	0.170	
CARBARYL sevin	1.80	0.180	63–25–2
CARBAZOLE (M)	2444400.00	0.973	86–74–8
CARBENDAZIM	0.14	0.029	
CARBON DIOXIDE (M)	1587.29	0.668	
CARBON DISULFIDE	1063.99	0.669	75–15–0
CARBON OXYFLUORIDE *	3527.74	0.993	353–50–4
CARBON TETRACHLORIDE	1677.80	0.634	56–23–5
CARBONYL FLUORIDE *	2.78	0.358	
CARBONYL SULFIDE	5.49	0.500	
CHLORAL	53.89	0.514	302–17–0
CHLORAMBEN	1.89	0.209	
CHLORAMBUCIL	0.31	0.039	305–03–3
CHLORDANE	2.04	0.130	57–74–9
CHLORENDIC ANHYDRIDE (M)	400.00	0.504	115–27–5
CHLORINATED TARS (M)	9.72	0.252	
CHLORNAPHAZINE	1.67	0.141	
CHLORO 2 BUTENE, 1 trans	104.44	0.598	
CHLORO(-p)PHENYLHYDRAZINE (M)	15.78	0.367	
CHLORO-1,3-CYCLOPENTADIENE 5	2777.75	0.740	
CHLORO-2,2-DIBROMOETHANE 1	43.50	0.502	
CHLORO-2,3-EPOXYPROPANE,1-(M)	1.79	0.321	106–89–8
CHLORO-2-METHOXYBENZOIC ACID 4 (M)	207.78	0.507	57479–70–
CHLORO-2-NITROBENZYL ALCOHOL 4 (M)	0.21	0.041	22996–18–
CHLORO-3-NITRO-5-PHENYLCYCLOHEXA (M)	0.23	0.044	
CHLORO-3-NITROANILINE 4 (M)	9.61	0.317	635–22–3
CHLORO-4AMINOCOUMARAN-6CARBOXYLI (M)	5407.73	0.643	
CHLORO-4-CYANOBENZYL ALCOHOL 2 (M)	0.34	0.071	
CHLORO-4-HYDROXYBIPHENYL 3 (M)	29944.00	0.751	92–04–6
CHLORO-4-METHOXY–6-AMINOBENZOIC (M)	22.22	0.353	
CHLORO-4-METHYL-N-METHYLBENZAMID (M)	0.51	0.085	
CHLORO-4-NITROANISOLE 2 (M)	4749200.00	0.965	
CHLORO-4-PHENYLPYRIDINE 2 (M)	0.53	0.085	
CHLORO-5AMINO3PYRIDINE CARB.ACID (M)	20.33	0.357	
CHLORO-5-CYANOPHTHALIC ACID 4 (M)	11423.00	0.677	
CHLORO-5-CYANOTOLUENE 3 (M)	83.89	0.467	
CHLORO-5-FLUOROTOLUENE 3	16.06	0.339	443–83–4
CHLORO-5-PHENOXYDIMETHYL PHTHALA (M)	8888.80	0.645	
CHLOROACETALDEHYDE	1.44	0.324	107–20–0
CHLOROALLYL ALCOHOL 2	1.02	0.244	5976–47–6
CHLOROANILINE (2)	933.32	0.658	95–51–2
CHLOROANILINE (3)	933.32	0.653	108–42–9
CHLOROAZOBENZENE	599.99	0.444	
CHLOROBENZENE	209.00	0.446	108–90–7
CHLOROBENZENESULFONIC ACID (-p) (M)	0.49	0.085	100–03–8
CHLOROBENZILATE	0.21	0.026	510–15–6
CHLOROBENZOIC ACID,2	0.41	0.091	118–91–2

TABLE 4 OF APPENDIX J—FET VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25 °C GREATER THAN OR EQUAL TO 0.1 (Y/X) ATMOSPHERE PER MOLE FRACTION—Continued

[Use with section 2.5.3]

Compound	Y/X	Fet	CAS
CHLOROBENZOIC ACID,3-	0.26	0.061	535–80–8
CHLOROBENZOIC ACID,4-	0.26	0.061	74–11–3
CHLOROBENZOTRICHLORIDE P	6388.83	0.523	5216–25–1
CHLOROBENZOTRIFLUORIDE, P	31415.00	0.544	
CHLOROBENZYL ALCOHOL -(m)	0.16	0.040	873–63–2
CHLOROBENZYL ALCOHOL -(o)	0.16	0.040	17849–38–
CHLOROBENZYL ALCOHOL -(p)	0.16	0.040	873–76–7
CHLOROBIPHENYL (-p)	522.22	0.452	2051–62–9
CHLOROBUTADIENE,1	561.11	0.629	
CHLOROCOUMARAN 2 (M)	501.66	0.562	2051–59–4
CHLOROCYANOBENZENE (1,4) (M)	955550.00	0.956	873–32–5
CHLOROCYCLOHEXANE	822210.00	0.973	542–18–7
CHLOROCYCLOHEXANOL 2	14.94	0.428	1561–86–0
CHLOROCYCLOHEXANOL 4	75.00	0.554	
CHLORODIACETYL (M)	588880.00	0.949	
CHLORODIMETHYL PHTHALATE 3 (M)	6388.83	0.646	
CHLORODIPHENYL THIOETHER P (M)	566.66	0.558	7005–72–3
CHLOROETHANE (ethyl chloride)	672.00	0.723	75–00–3
CHLOROETHANOL (ETHYLENE CHLOROHYDRI	0.59	0.221	107–07–3
CHLOROETHYL(2-) VINYL ETHER	1922.20	0.758	110–75–8
CHLOROETHYLENE	301.66	0.747	
CHLOROFLUOROBENZENE P	9055500.00	0.971	352–33–0
CHLOROFLUOROMETHANE *	94999.00	0.972	593–70–4
CHLOROFORM	221.33	0.612	67–66–3
CHLOROHYDROXYPHENYL4 METHYL BENZ (M)	6648.85	0.641	
CHLOROMETHYL ACETYLENE *	6917.51	0.789	
CHLOROMETHYL BENZOATE P (M)	4738.84	0.650	1126–46–1
CHLOROMETHYL ETHYL KETONE	147.78	0.679	
CHLOROMETHYL METHYL ETHER	4.79	0.458	107–30–2
CHLOROMETHYL PHENYL KETONE	0.17	0.042	532–27–4
CHLOROMETHYL PHENYLHYDRAZINE P (M)	17.44	0.363	
CHLOROMETHYLAMINOIMINE (M)	1988.32	0.670	
CHLORONAPHTHALENE,2-	1011.10	0.533	91–58–7
CHLORONITROALKOXYIMINE (M)	1.28	0.136	
CHLORONITROBENZENE(-o)	437.77	0.585	88–73–3
CHLORONITROBENZENE, p	5.08	0.289	
CHLORO-N-METHYLBENZAMIDE P (M)	0.47	0.085	
CHLOROPHENOL-2	0.46	0.106	95–97–8
CHLOROPHENOL-3	0.18	0.054	108–43–0
CHLOROPHENYL PHENYL ETHER,4-*	14.78	0.310	7005–72–3
CHLOROPHENYLETHANOL 1,1	435.00	0.617	
CHLOROPHTHALIC ANHYDRIDE 4 (M)	0.20	0.040	
CHLORO-p′-METHYLBIPHENYL P (M)	561.11	0.558	1667–11–4
CHLOROPRENE	51.63	0.597	126–99–8
CHLOROPROPANE-1	722.22	0.742	540–54–5
CHLOROPROPANE-2	944.44	0.745	75–29–6
CHLOROPROPENE 3	19944.00	0.913	557–98–2
CHLOROPROPIONITRILE,3-	0.28	0.111	542–76–7
CHLOROPROPYLENE-2	19944.00	0.839	557–98–2
CHLORO-p-XYLENE	78.33	0.421	104–82–5
CHLOROPYRIDINE 2 (M)	82.78	0.496	109–09–1
CHLOROSTYRENE (-4)	385.00	0.522	1331–28–8
CHLOROTETRAHYDROFURAN 3 (M)	16.83	0.387	
CHLOROTHIOPHENOL P *	4016.63	0.604	106–54–7
CHLOROTOLUENE-4	258.89	0.511	106–43–4
CHLOROURACIL,5-(M)	588880.00	0.943	1820–81–1
cis 1,2 DIMETHYLCYCLOHEXANE	19841.00	0.682	
CITRUS RED #2 (M)	611.11	0.509	6358–53–8
COPPER PHTHALOCYANINE (M)	320.00	0.353	147–14–8
COUMARAN (M)	5344.39	0.694	91–64–5
CROTONALDEHYDE	0.86	0.212	470–30–3
CROTONYLENE (2-BUTYNE)	375550.00	0.977	503–17–3
CUMENE (isopropylbenzene)	727.77	0.545	98–82–8
CUMENE HYDROPEROXIDE	1.73	0.204	
CYANOBENZYL ALCOHOL P*	0.13	0.040	
CYANOGEN	275.55	0.734	460–19–5
CYANOGEN BROMIDE*	11.33	0.462	506–68–3
CYANOGEN CHLORIDE(M)	149.78	0.704	506–77–4
CYANOGUANIDINE (M)	115.55	0.484	461–58–5

TABLE 4 OF APPENDIX J—FET VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25 °C GREATER THAN OR EQUAL TO 0.1 (Y/X) ATMOSPHERE PER MOLE FRACTION—Continued

[Use with section 2.5.3]

Compound	Y/X	Fet	CAS
CYANOMETHYLPHTHALATE 4 (M)	2116400.00	0.882	
CYANOPYRIDINE (-4)*	14444.00	0.800	100–48–1
CYANOPYRIDINE 3*	14444.00	0.807	100–54–9
CYANOTOLUENE 4	816660.00	0.955	
CYANURIC ACID (M)	0.14	0.042	108–80–5
CYCASIN (M)	400.00	0.439	14901–08–
CYCLOHEXADIENE 1,4DIONE2,6BIS11D IMET	0.14	0.028	
CYCLOHEXANE	761.10	0.626	110–82–7
CYCLOHEXANOL	0.61	0.159	
CYCLOHEXANOL	0.25	0.136	108–93–0
CYCLOHEXANONE	0.23	0.088	108–94–1
CYCLOHEXENE	572220.00	0.960	110–83–8
CYCLOHEXENE 1 ONE, 2	0.73	0.183	
CYCLOHEXYL ACETATE	3.95	0.273	622–45–7
CYCLOHEXYL-2,2-DIPHENYLETHYLAMIN(M)	14.28	0.279	
CYCLOHEXYL-4,6-DINITROPHENOL,2-(M)	245550000.00	0.943	131–89–5
CYCLOHEXYLAMINE	2.35	0.280	108–91–8
CYCLOHEXYLCYCLOHEXANONE 4	223.33	0.436	56025–96-
CYCLOPENTADIENE	1072200.00	0.980	
CYCLOPENTADIENE 1,3	183.89	0.615	
CYCLOPENTANE	8417.42	0.767	
CYCLOPENTENE	3472.19	0.731	
CYCLOPHOSPHAMIDE (M)	89.71	0.544	50–18–0
CYCLOPROPANE C3H6	5050.46	0.833	
CYLCOHEXYL o,o-DIMETHYL PHOS.DIT(M)	87719.00	0.778	
CYMENE,para	1016.66	0.519	
CYTOSINE (M)	198.29	0.831	71–30–7
DAUNOMYCIN(M)	611.11	0.466	20830–81–
DAZOMET	0.11	0.029	
DDD,p,p′-	15.33	0.258	72–54–8
DDE,p,p′-	97.78	0.328	72–55–9
DDT	6333.27	0.398	50–29–3
DECANAL	91.07	0.415	
DECENE, 8 METHYL 1-	4461.07	0.507	
DIACETYL (M)	4.78	0.318	431–03–8
DIAMINO-5-SULFONYL BENZYL 2,4 (M)	101.70	0.396	
DIAMINODIPHENYLMETHANE P,P′ (M)	27246.00	0.606	101–77–9
DIAZOMETHANE	0.72	0.329	
DIBENZOFURANS	221.66	0.365	
DIBENZOPYRENE 1,2,7,8	202.22	0.318	
DIBROMO-3-CHLOROPROPANE,1,2	1.31	0.173	96–12–8
DIBROMOCHLOROMETHANE	43.50	0.643	124–48–1
DIBROMOETHANE-1,2	605.55	0.675	106–93–4
DIBROMOMETHANE	55.44	0.542	74–95–3
DIBUTYL ETHER	222.22	0.499	142–96–1
DIBUTYLAMINE	5.05	0.293	
DICHLORO 2-PROPANOL 1,3	25.56	0.570	96–23–1
DICHLORO PROPANOL 2,3	1.30	0.255	616–23–9
DICHLORO-1,3-CYCLOPENTADIENE 5,5(M)	3738.85	0.655	
DICHLORO-2-BUTENE 1,2	55.17	0.562	
DICHLORO-2-BUTENE(1,4)	14.39	0.453	764–41–0
DICHLORO-2-BUTENE, 1,4	91.67	0.594	
DICHLOROANILINE(2,3)	0.10	0.026	
DICHLOROBENZENE(1,2) (-o)	107.78	0.559	95–50–1
DICHLOROBENZENE(1,3) (-m)	200.55	0.510	541–73–1
DICHLOROBENZENE(1,4) (-p)	176.11	0.502	106–46–7
DICHLOROBENZIDINE,3,3'-	0.15	0.023	91–94–1
DICHLOROBENZOPHENONE P,P	0.26	0.038	90–98–2
DICHLOROBIPHENYL (PARA)	1999.98	0.425	213029–08
DICHLOROBUTANE (1,4)	176660.00	0.978	110–56–5
DICHLORODIPHENYLMETHANE (M)	661.11	0.554	2051–90–3
DICHLOROETHANE(1,1)	312.23	0.562	75–34–3
DICHLOROETHANE(1,2)	65.38	0.524	107–06–2
DICHLOROETHENE 1,2 trans	3582.00	0.775	156–60–5
DICHLOROETHENE(1,1)	1438.90	0.680	75–35–4
DICHLOROETHYL ETHER	1.14	0.197	
DICHLOROETHYLENE(1,2) cis	861.00	0.664	156–54–2
DICHLOROIODOMETHANE	11.89	0.350	
DICHLOROMONOFLUOROMETHANE	51166000.00	0.989	75–43–4

TABLE 4 OF APPENDIX J—FET VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25 °C GREATER THAN OR EQUAL TO 0.1 (Y/X) ATMOSPHERE PER MOLE FRACTION—Continued

[Use with section 2.5.3]

Compound	Y/X	Fet	CAS
DICHLOROPHENOL	2.78	0.227	
DICHLOROPHENOL(2,4)	0.27	0.055	120–83–2
DICHLOROPHENOL(2,6)	0.27	0.055	87–65–0
DICHLOROPHENOXYACETIC ACID(2,4)	3449.97	0.626	94–75–7
DICHLOROPROPANE 1,2	159.00	0.540	78–87–5
DICHLOROPROPENE(1,3)	197.22	0.594	542–75–6
DICHLOROPROPYLENE,1,2-(cis)	498.88	0.608	
DICHLOROPROPYLENE,1,2-(trans)	611.11	0.625	563–54–2
DICHLOROPROPYLENE–2,3	716.66	0.694	78–88–6
DICHLOROSTYRENE 2,6	477.77	0.467	
DICHLORO-TRANS-ETHYLENE(1,2)	4722.18	0.725	540–59–0
DIELDRIN	3.24	0.160	60–57–1
DIETHYL AMINE	1.42	0.286	109–89–7
DIETHYL ETHER	14.72	0.423	602–97–6
DIETHYL ETHER ACID CHLORIDE (M)	69148.00	0.836	
DIETHYL PHTHALATE	616.66	0.514	84–66–2
DIETHYL SULFATE	0.34	0.101	
DIETHYL THIOETHER(M)	25000.00	0.719	352–93–2
DIETHYLBENZENE P	372.77	0.481	105–05–5
DIETHYLDIPHENYL UREA SYM(M)	744.44	0.466	85–98–3
DIETHYLENE GLYCOL DIETHYL ETHER	0.12	0.031	
DIETHYLUREA 1,1 (M)	0.32	0.085	634–95–7
DIHYDRO-5-OXAZALONE (DIHYDROAZLA(M)	209.68	0.493	
DIISOBUTYLENE	6531.46	0.594	
DIISODECYL PHTHALATE	22.67	0.238	
DIISOPROPYL BENZENE (PARA)	5944.39	0.507	100–18–5
DIISOPROPYL KETONE	31.56	0.441	
DIISOPROPYLAMINE	17.06	0.403	
DIMETHOXY METHANE	6.72	0.442	109–87–5
DIMETHOXY-(3,3')-BENZIDINE	135.55	0.422	119–90–4
DIMETHYL AMINE	0.29	0.198	124–40–3
DIMETHYL BENZ(A)ANT 7,12	705.55	0.373	
DIMETHYL BENZOIC ACID, 2,4	0.59	0.115	
DIMETHYL BENZOIC ACID, 3,5	0.59	0.115	
DIMETHYL BENZYLAMINE N,N	75.00	0.481	103–83–3
DIMETHYL METHYLTHIOCARBAMATE N,N(M)	835.09	0.585	
DIMETHYL NITROISOPROPYLAMINE N,N(M)	14.78	0.340	
DIMETHYL NITROSAMINE (M)	10739.00	0.952	
DIMETHYL SULFATE	0.22	0.074	77–78–1
DIMETHYL SULFIDE	302.78	0.679	75–18–3
DIMETHYL TRISULFIDE	168470.00	0.568	
DIMETHYL-1-NITROBENZENE 2,4	420.00	0.550	25168–04–
DIMETHYLACETAMIDE	0.57	0.284	
Dimethylaniline N,N	0.77	0.316	57–14–7
DIMETHYLBENZYL HYDROPEROXIDE (M)	26.72	0.391	80–15–9
DIMETHYLETHYLAMINE	21.39	0.523	75–64–9
DIMETHYLGLYCOL	5.05	0.483	
DIMETHYLHYDANTOIN,5,5-(M)	10739.00	0.596	77–71–4
DIMETHYLPHENOL(2,4)	51.17	0.400	105–67–9
DIMETHYLPHENYLCARBINOL (M)	400.00	0.497	617–94–7
DIMETHYLSULFOXIDE	2.59	0.419	
DINITROBENZENE M	1.22	0.285	99–65–0
DINITROPHENOL 2,4	0.28	0.055	51–28–5
DINITROTOLUENE 2,6	0.51	0.091	606–20–2
DINITROTOLUENE(2,4)	0.40	0.165	121–14–2
DINOCAP (M)	>10000	0.935	39300–45–
DI-n-OCTYL PHTHALATE	7611.04	0.318	117–84–0
DINOSEB (M)	66.67	0.375	88–85–7
DIOXANE(1,4)	0.31	0.168	123–91–1
DIOXIN (M)	4.51	0.279	828–00–2
DIPHENYL ETHER (M)	124.44	0.509	101–84–8
DIPHENYL THIOETHER(M)	517.22	0.593	139–66–2
DIPHENYLAMINE (M)	0.15	0.046	122–39–4
DIPHENYLBUTADIENE 1,3 (M)	114.44	0.488	886–65–7
DIPHENYLCHLOROMETHANE (M)	561.11	0.591	90–99–3
DIPHENYLDIKETONE (M)	583.33	0.590	134–81–6
DIPHENYLETHANE 1,1(M)	50.56	0.439	
DIPHENYLETHANOL 1,1 (M)	0.11	0.023	599–67–7
DIPHENYLHYDRAZINE,1,1-(M)	405.55	0.580	530–50–7

TABLE 4 OF APPENDIX J—FET VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25 °C GREATER THAN OR EQUAL TO 0.1 (Y/X) ATMOSPHERE PER MOLE FRACTION—Continued

[Use with section 2.5.3]

Compound	Y/X	Fet	CAS
DIPHENYLMETHANE	2.02	0.195	101–81–5
DIPROPYLAMINE	14.06	0.411	142–84–7
DIPROPYLBUTRAL	4.82	0.264	
DIPROPYLFORMAMIDE(M)	10739.00	0.595	6282–00–4
DI-tert-BUTYL-p-CRESOL	0.14	0.027	128–37–0
DIVINYL KETONE (M)	24.33	0.419	
Dodecane	396820.00	0.663	
EDTA(M)	16.67	0.412	60–00–4
ENDOSULFAN	0.35	0.036	115–29–7
ENDOSULFAN SULFATE(M)	2642200.00	0.906	1031–07–8
ENDRIN ALDEHYDE (M)	16.67	0.412	
EPICHLOROHYDRIN	1.86	0.325	106–89–8
EPOXYBUTANE 1,2	25.61	0.513	
ETHANE	2738.86	0.833	
ETHANOL	0.31	0.126	64–17–5
ETHENE	11820.00	0.905	
ETHENYL 2 METHYL BENZENE, 1-	176.67	0.494	
ETHOXYETHANOL–2	0.35	0.134	110–80–5
ETHYL 2 METHYL BENZENE, 1-	231.48	0.488	
ETHYL ACETATE PEROXIDE (M)	166.67	0.463	
ETHYL ACRYLATE	14.11	0.425	140–88–5
ETHYL BUTANOATE	19.84	0.457	
ETHYL CYANIDE (PROPIONITRILE) (M)	15.28	0.580	107–12–0
ETHYL ETHER	37.78	0.500	60–29–7
ETHYL HEPTANOATE	27.78	0.385	
ETHYL ISOPROPYL PEROXIDE (M)	14.44	0.356	
ETHYL METHANOATE	15.43	0.566	
ETHYL PENTANOATE	19.16	0.419	
ETHYL PEROXIDE	0.16	0.112	
ETHYL PROPYL ETHER	63.86	0.532	
ETHYL S,S-DIPHENYL PHOSPHORODITH (M).	8.61	0.246	1709–49–8
ETHYL TOLUENE, 4	711.10	0.538	
ETHYL VINYL ETHER	118.33	0.603	
ETHYL(2) HEXANOL	3.43	0.266	104–76–7
ETHYL-(2)–PROPYL-(3) ACROLEIN (M)	1.79	0.257	645–62–5
ETHYLACETATE	7.11	0.404	141–78–6
ETHYLAMINE	0.57	0.280	75–04–7
ETHYLBENZENE	437.81	0.557	100–41–4
ETHYLENE	24555.00	0.931	74–85–1
ETHYLENE DIAMINE	0.47	0.241	107–15–3
ETHYLENE DIBROMIDE	36.11	0.471	106–93–4
ETHYLENE GLYCOL DIMETHYL ETHER	1.95	0.292	110–71–4
ETHYLENE GLYCOL MONOBUTYL ETHER ACET.	0.27	0.062	
ETHYLENE GLYCOL MONOMETHYL ETHER ACET.	0.12	0.046	110–49–6
ETHYLENE OXIDE	13.23	0.450	75–21–8
ETHYLETHOXY PROPIONATE	1.50	0.213	
ETHYLHEXYL HEXANOL 2	0.88	0.113	
ETHYLHEXYLACRYLATE,2-	163.33	0.425	103–11–7
FENCHONE, d- (M)	16.67	0.368	4695–62–9
FLUORANTHENE	120.77	0.457	206–44–0
FLUORENE	6.50	0.282	86–73–7
FLUOROMETHANE	1068.37	0.824	
FLUOROURACIL, 5- (M)	16.67	0.412	51–21–8
FORMYL FLUORIDE	18.52	0.577	
FREON 11, fluorotrichloromethane	2911.08	0.669	
FREON 12 DICHLORODIFLUOROMETHANE	22278.00	0.818	75–71–8
FREON 12, dichlorodifluoromethane	43386.00	0.839	
FREONS (M)	22278.00	0.746	
FURAN	296.66	0.650	110–00–9
FURFURAL	4.51	0.354	98–01–1
FUROIC ACID(M)	30.62	0.382	88–14–2
GEOSMIN (M)	16.67	0.350	19700–21–
GLYOXAL	0.61	0.297	
GUANINE (M)	10739.00	0.962	73–40–5
HEPTACHLOR	127.78	0.337	76–44–8
HEPTACHLOR EPOXIDE (M)	1.76	0.118	1024–57–3
HEPTANAL	16.84	0.394	
HEPTANE ISO	241660.00	0.887	31394–54–

TABLE 4 OF APPENDIX J—FET VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25 °C GREATER THAN OR EQUAL TO 0.1 (Y/X) ATMOSPHERE PER MOLE FRACTION—Continued

[Use with section 2.5.3]

Compound	Y/X	Fet	CAS
HEPTANE(-n)	112220.00	0.836	142–82–5
HEXACHLOROBENZENE	94.45	0.351	118–74–1
HEXACHLOROBUTADIENE	572.23	0.505	87–68–3
HEXACHLOROCYCLOHEXANE (GAMMA ISOMER	0.43	0.058	58–89–9
HEXACHLOROCYCLOPENTADIENE	369.44	0.456	77–47–4
HEXACHLOROETHANE	463.89	0.440	67–72–1
HEXACHLOROPENTADIENE (M)	766.66	0.550	
HEXADECANE N (M)	1400000.00	0.963	544–76–3
HEXAFLUOROACETONE	9017200.00	0.912	
HEXAFLUOROPROPENE	191570.00	0.710	116–15–4
HEXAMETHYLENEDIAMINE (M)	1.60	0.213	124–09–4
HEXAMETHYLENIMINE	0.35	0.109	
HEXANAL	11.82	0.400	
HEXANE(-n)	42667.00	0.801	110–54–3
HEXANOL 2 ETHYL	0.64	0.134	104–76–7
HEXANOL-1	1.01	0.180	111–27–3
HEXEN-2-ONE 5	4.44	0.347	
HEXENE	23148.00	0.769	
HEXYL ETHANOATE	29.24	0.396	
HEXYLAMINE	1.50	0.239	
HYDROFLUORIC ACID (M)	13.17	0.537	7664–39–3
HYDROGEN SULFIDE	1277.77	0.785	
HYDROXY DIMETHYL ETHER (M)	1083.32	0.580	
HYDROXY-1, 3-CYCLOPENTADIENE 5 (M)	225.00	0.519	
HYDROXY-4 METHYLTETRAHYDROFURAN (M)	14.33	0.356	
HYDROXY-5 METHYLDIMETHYL PHTHALA (M)	6277.72	0.543	
HYDROXY 6 METHYLPYRIDINE 3 CARBOXYL I (M)	17.00	0.326	38116–61–
HYDROXYACETIC ACID	10.56	0.570	79–14–1
HYDROXYCYCLOHEXANONE 4 (M)	0.23	0.069	
HYDROXYDIMETHYL PHTHALATE 4 (M)	5833.28	0.545	
HYDROXYMETHYL ACETYLENE (M)	58129.00	0.730	
HYDROXYMETHYL ISOPROPYL KETONE (M)	125.00	0.477	
HYDROXYMETHYL, N-METHYLETHYL AMI (M)	24722.00	0.650	
HYDROXYMETHYL-N-CHLOROMETHYLETHY (M)	22732.00	0.634	
HYDROXYMETHYLPHENYL CARBAMATE N (M)	0.87	0.137	
HYDROXYMETHYLTHIOBENZENE (M)	388.89	0.493	
HYDROXYMETHYLVINYL ETHER (M)	1805.54	0.553	
HYDROXYPENTANE 3 (M)	22.39	0.391	
INDANOL,5-(M)	10739.00	0.568	1470–94–6
INDOLE (M)	10739.00	0.763	120–72–9
IODOCOUMARAN 2 (M)	107890.00	0.898	
ISOBUTANE	3105.53	0.728	
ISOBUTYL ETHANOATE	25.25	0.486	
ISOBUTYLBENZENE	1792.10	0.550	
ISOBUTYLENE	2038.87	0.722	
ISOCYANO 4 METHYL BENZENE*	1.49	0.198	
ISODECANOL	0.30	0.069	
ISODECYL OCTYL ESTER	1827.76	0.364	
ISOPENTANE	2905.53	0.684	
ISOPENTYL ETHANOATE	32.68	0.435	
ISOPENTYL METHANOATE	37.04	0.484	
ISOPHORONE	0.37	0.100	78–59–1
ISOPROPYL AMINE	19.89	0.538	75–31–0
ISOPROPYL ETHER	231.00	0.487	108–20–3
ISOPROPYL METHANOATE	46.30	0.578	
ISOPROPYL METHANOATE	32.68	0.547	
ISOPROPYL PROPANOATE	32.68	0.459	
ISOXAZOLOL,5-(AMINOMETHYL)-3-(M)	10739.00	0.603	2763–96–4
LINDANE hexachlorocyclohexane	116.67	0.541	
MELAMINE (M)	4611.07	0.577	108–78–1
MERCAPTOBENZOTHIAZOLE, 2	110.55	0.450	
MERCURY (M)	633.33	0.587	7439–97–6
METHACRYLIC ACID	0.63	0.194	79–41–4
METHANE	74444.00	0.980	74–82–8
METHANETHIOL (M)	232.22	0.611	74–93–1
METHANOL	0.29	0.155	67–56–1
METHAPYRILENE (M)	10739.00	0.549	91–80–5
METHOXYACETIC ACID	0.10	0.053	625–45–6
METHOXYACETONITRILE (M)	9.89	0.382	1738–36–9

TABLE 4 OF APPENDIX J—FET VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25 °C GREATER THAN OR EQUAL TO 0.1 (Y/X) ATMOSPHERE PER MOLE FRACTION—Continued

[Use with section 2.5.3]

Compound	Y/X	Fet	CAS
METHOXYCHLOR	14.39	0.241	72–43–5
METHYL 1-PENTENE 2	583330.00	0.954	763–29–1
METHYL 2-PROPYL ETHER	46.30	0.400	
METHYL ACETATE	5.67	0.454	79–20–9
METHYL ACRYLATE	30.17	0.408	96–33–3
METHYL ACRYLONITRILE (M)	21778.00	0.661	126–98–7
METHYL AMINE	298.89	0.877	74–89–5
METHYL AMINOACETYLENE (M)	7499.93	0.644	
METHYL AZIRIDINE 2	1.76	0.360	
METHYL BENZOATE	0.99	0.168	
METHYL BENZYL ALCOHOL 4	0.77	0.154	
METHYL BIPHENYL (-p) (M)	467.77	0.595	644–08–6
METHYL BUTANOATE	11.34	0.413	
METHYL CHLORIDE	490.00	0.626	74–87–3
METHYL CHLOROACETAMIDE N (M)	0.60	0.137	
METHYL CHLOROCARBONATE (M)	13111.00	0.726	79–22–1
METHYL CHOLANTHRENE 3	7.44	0.234	56–49–5
METHYL COUMARAN 2 (M)	445.00	0.587	607–71–6
METHYL CYCLOHEXANE	54388.00	0.802	108–87–2
METHYL ETHER dimethyl ether	176.67	0.730	115–10–6
METHYL ETHYL ETHER	61.73	0.617	
METHYL ETHYL KETONE, 2 butanone	7.22	0.435	78–93–3
METHYL FORMATE	12.35	0.548	107–31–3
METHYL HEXANOATE	20.58	0.393	
METHYL IODIDE	140.55	0.563	74–88–4
METHYL ISOAMYL KETONE (M)	7.00	0.304	110–12–3
METHYL ISOBUTYL KETONE	21.67	0.457	108–10–1
METHYL ISOCYANATE	583.33	0.650	624–83–9
METHYL ISOPROPYL KETONE	25.44	0.523	563–80–4
METHYL MERCAPTAN	200.00	0.700	
METHYL METHACRYLATE	7.83	0.322	80–62–6
METHYL MORPHOLINE	0.18	0.069	
METHYL NAPTHALENE(1-)	39.44	0.370	90–12–0
METHYL NAPTHALENE(2-)	3.22	0.246	91–57–6
METHYL OCTANOATE	42.74	0.387	
METHYL PENTANOATE	17.92	0.414	
METHYL PEROXIDE	0.18	0.159	
METHYL PROPANOATE	8.96	0.431	
METHYL PROPENE 2 (M)	388890.00	0.963	115–11–7
METHYL PROPYL ETHER	81.70	0.594	
METHYL TERTIARY-BUTYL ETHER	30.84	0.494	1634–04–4
METHYL TETRAHYDROFURAN 2	5.05	0.357	
METHYL THIOURACIL(M)	291.63	0.479	56–04–2
METHYL-1,3-CYCLOPENTADIENE 5 (M)	2227.76	0.679	26519–91–
METHYL-2,3,4-TRIHYDROQUINOLINE N(M)	0.81	0.137	
METHYL-2-AMINOETHYLAMINE(M)	1027.77	0.635	109–81–9
METHYL-2-HYDROXYETHYLAMINE (M)	0.19	0.080	109–83–1
METHYL-3-ACETYLCYCLOPENTADIENE 1(M)	294.44	0.588	
METHYL-3-NITROBENZYL ALCOHOL 4 (M)	0.37	0.073	40870–59–
METHYL-4-NITROBENZYL ALCOHOL 2 (M)	0.19	0.041	23876–13–
METHYL-5-THIOACETYLDIHYDRO1, 3THI (M)	43427.00	0.648	
METHYLACETONITRILE (M)	19944.00	0.643	75–86–5
METHYLBUTADIENE (isoprene)	4273.46	0.726	
METHYLBUTYLAMINE	0.62	0.178	
METHYLCYCLOPENTANE	19841.00	0.776	
METHYLENE CHLORIDE, dichloromethane	164.45	0.647	75–09–2
METHYLFURAN 2 (M)	0.15	0.064	534–22–5
METHYLISOBORNEOL,2-(M)	400.00	0.477	NA
METHYLPHENYL CARBAMATE N(M)	0.78	0.137	
METHYL-PHENYLETHYLAMINE N(M)	75.00	0.412	589–08–2
METHYL-p′-METHYLTRIPHENYL PHOSPH(M)	811.10	0.584	
METHYLSTYRENE (-4)	328.33	0.532	98–93–9
METHYLTIN TRICHLORIDE (M)	0.13	0.022	993–16–8
METHYL-TRIHYDRO–1,3-THIAZOLE 4 (M)	5.83	0.316	
MITOMYCIN C(M)	10739.00	0.532	50–07–7
MNNG(M)	10739.00	0.587	70–25–7
MONOCHLORODIFLUOROMETHANE	23666000.00	0.990	75–45–6
MORPHOLINE	3.18	0.437	110–91–8
MUSTARD GAS(M)	16.67	0.364	505–60–2

TABLE 4 OF APPENDIX J—FET VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25 °C GREATER THAN OR EQUAL TO 0.1 (Y/X) ATMOSPHERE PER MOLE FRACTION—Continued

[Use with section 2.5.3]

Compound	Y/X	Fet	CAS
NAPHTHALENE	26.84	0.413	
NAPHTHALENE ACETIC ACID 2 METHYL, 1	61.11	0.357	
NAPHTHOQUINONE–1,4(M)	128	0.164	130–15–4
NICKEL CYANIDE (M)	3.08	0.284	557–19–7
NITRO m XYLENE, 2	23.72	0.370	
NITRO-4-METHYLBENZOATE 3(M)	133990.00	0.733	
NITROANILINE P	12.61	0.411	100–01–6
NITROBENZENE	1.33	0.210	98–95–3
NITROBENZENESULFONYL CHLORIDE P(M)	24.61	0.316	98–74–8
NITROBENZYL ALCOHOL P (M)	11.17	0.314	619–73–8
NITROBIPHENYL,4-	0.40	0.068	92–93–3
NITROCELLULOSE (M)	55.56	0.109	9004–70–0
NITROETHANE	0.40	0.161	
NITROGEN MUSTARD N-OXIDE(M)	400.00	0.475	126–85–2
NITROMETHANE	1305.54	0.859	75–52–5
NITRO METHYLBENZENE	3.59	0.270	
NITROPROPANE 2	6.61	0.396	79–46–9
NITROSOBENZYL ALCOHOL 4 (M)	0.75	0.136	
NITROSOPYRROLIDINE N (M)	694440.00	0.884	930–55–2
NITROTOLUENE (-p)	22.67	0.399	99–99–0
NITROTOLUENE, m	3.97	0.279	
NITROTOLUENE, o	4.88	0.296	
NITROTOLUENE, o	3.27	0.266	
NONANAL	55.56	0.413	
NONANOL, n	0.25	0.065	
NONYLPHENOL(M)	400.00	0.452	25154–52–
OCTAMETHYLPYROPHOSPHORAMIDE (M)	>10000	0.941	152–16–9
OCTANAL	26.46	0.394	
OCTANE	215000.00	0.839	111–65–9
OCTANOL 1	2.41	0.240	111–87–5
OCTANOL 2	0.66	0.136	
OCTANOL 3	0.39	0.098	
OCTANOL 4	0.52	0.118	
OIL (decane)	2844.42	0.513	
OXAMIC ACID(M)	4.94	0.317	471–47–6
PARABROMOPHENOL (M)	0.90	0.135	106–41–2
PARAFORMALDEHYDE (M)	55.56	0.225	30525–89–
PARALDEHYDE	2.04	0.232	123–63–7
PCB 1016 (monochlorobiphenyl)	10.00	0.289	12674–11–
PCB 1221 (monochlorobiphenyl)	18.00	0.342	11104–28–
PCB 1232 (dichlorobiphenyl)	48.00	0.370	11141–16–
PCB 1242 (trichlorobiphenyl)	33.00	0.317	53469–21–
PCB 1248 (quatrochlorobiphenyl)	110.00	0.326	12672–29–
PCB 1254 (pentachlorobiphenyl	450.00	0.539	11097–69–
PCB 1260 (hexachlorobiphenyl)	394.00	0.333	11096–82–
PCB'S (Aroclors)	48.00	0.338	
PENTACHLOROBENZENE	405.55	0.396	608–93–5
PENTACHLOROETHANE	1166.66	0.608	76–01–7
PENTACHLORONITROBENZENE	21.39	0.286	
PENTACHLOROPHENOL	4.90	0.261	87–86–5
PENTADIENE 1,2	661.11	0.666	
PENTAERYTHRITOL TETRANITRATE (M)	1.76	0.133	78–11–5
PENTANAL	8.17	0.406	
PENTANE	2244.42	0.676	
PENTYL PROPANOATE	46.30	0.418	
PENTYLAMINE	1.36	0.254	
PENTYLBENZENE	326.79	0.458	
PENTYLCYCLOPENTANE	101010.00	0.700	
PERCHLOROMETHYL MERCAPTAN (M)	588880.00	0.942	594–42–3
PERYLENE (M)	611.11	0.525	198–55–0
PHENANTHRENE	1.98	0.193	85–01–8
PHENOL,3-(1,1-DIMETHYLETHYL)-(M)	400.00	0.504	585–34–2
PHENOTHIAZINE (M)	1105.54	0.613	92–84–2
PHENYL ISOCYANATE (M)	661.11	0.533	103–71–9
PHENYLACETIC PEROXIDE (M)	0.84	0.137	
PHENYLCYCLOHEXANONE 4	486.11	0.501	4894–75–1
PHENYLHYDRAZINE (M)	6.00	0.314	100–63–0
PHENYLPHENOL P	177.78	0.440	92–69–3
PHENYLTHIOUREA (M)	854.57	0.738	103–85–5

TABLE 4 OF APPENDIX J—FET VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25 °C GREATER THAN OR EQUAL TO 0.1 (Y/X) ATMOSPHERE PER MOLE FRACTION—Continued

[Use with section 2.5.3]

Compound	Y/X	Fet	CAS
PHOSGENE (decomposes)	780.00	0.584	75–44–5
PHOSPHINE	12611.00	0.799	7803–51–2
PHTHALATE, DI N BUTYL-	0.27	0.039	
PHTHALATE, DI N OCTYL	66.11	0.273	
PHTHALIC ACID	733.33	0.716	88–99–3
PHTHALIMIDE	633.33	0.710	85–41–6
PICOLINE(2-) (M)	7.06	0.398	109–06–8
PINENE (alpha-)	1455.54	0.540	80–56–8
PIPERAZINE	2.34	0.339	110–85–0
POLYCYCLIC KETONE O (M)	2777.75	0.415	
PROPANAL	4.27	0.436	
PROPANE	1222.21	0.755	74–98–6
PROPANE),2,2′-OXYBIS(2-CHLORO-(M)	588880.00	0.943	39638–32–
PROPANOIC ACID	0.10	0.062	79–09–4
PROPANOL	0.37	0.185	
PROPANOL ISO	0.43	0.190	67–63–0
PROPENAL	7.51	0.487	
PROPENE	11574.00	0.843	
PROPENYL BENZENE	767.99	0.567	
PROPIONALDEHYDE	3.32	0.375	123–38–6
PROPIONIC ACID	2.71	0.381	79–09–4
PROPIONITRILE (M)	15.28	0.580	107–12–0
PROPYL ACETATE ISO	17.61	0.453	108–21–4
PROPYL BUTANOATE	29.24	0.417	
PROPYL ETHER	191.57	0.565	111–43–3
PROPYL METHANOATE	20.58	0.506	
PROPYL PROPANOATE	21.37	0.427	
PROPYL THIOURACIL(M)	2171.99	0.588	51–52–5
PROPYL(-n) ACETATE	16.33	0.448	109–60–4
PROPYL(-n) BENZENE	366.11	0.520	103–65–1
PROPYL-3-METHOXY PYRAZINE,2-ISO(M)	10739.00	0.584	25773–40–
PROPYLAMINE	0.68	0.249	107–10–8
PROPYLCYCLOPENTANE	50505.00	0.752	
PROPYLENE	117220.00	0.962	115–07–1
PROPYLENE CHLOROHYDRIN	0.13	0.064	
PROPYLENE OXIDE	19.77	0.544	75–56–9
PROPYLENIMINE 1,2 2 METHYL aziri	0.52	0.222	75–55–8
PROPYN-1-OL 2(PROPARLGYL)	0.48	0.225	107–19–7
PROPYNE	610.50	0.763	
PYRENE	0.60	0.089	129–00–0
PYRIDINE	1.31	0.255	110–86–1
PYRROLIDINE	0.13	0.072	
QUINALDINE (M)	611.11	0.597	91–63–4
RESERPINE (M)	115.55	0.384	50–55–5
s ACETYLMERCAPTOSUCCINIC ACID	0.13	0.035	
S4CHL.CYCLOHEX.00DIMETH.PHOS.DI T(M)	9.61	0.243	
SACCHARIN (M)	559.24	0.679	81–07–2
SAFROLE (M)	16.67	0.362	94–59–7
sec BUTYLBENZENE	771.60	0.528	
SILVEX	346.11	0.431	93–72–1
SODIUM DODECYL SULFATE (M)	2.53	0.187	151–21–3
SODIUM DODECYLBENZENE SULFONATE(M)	0.79	0.094	25155–30–
STREPTOZOTOCIN (M)	10739.00	0.969	18883–66–
STYRENE	144.71	0.702	100–42–5
STYRENE OXIDE	4.96	0.305	
SULFIDE (M)	115.75	0.613	
TAMARON (METHAMIDIPHOS)	0.25	0.075	
TARS(M)	111.11	0.370	
t-BUTYL HYDROPEROXIDE	0.72	0.199	75–91–2
TERPINEOL, ALPHA	28.67	0.370	
tert BUTANOL	0.79	0.231	
tert-AMYLBENZENE	1010.09	0.503	
tert-BUTYLBENZENE	661.37	0.527	
TETRACHLOROAQUINONE (M)	6230900.00	0.961	
TETRACHLOROBENZENE(1,2,3,4)	150.00	0.383	634–66–2
TETRACHLOROBENZENE(1,2,3,5)	236.66	0.401	634–90–2
TETRACHLOROBENZENE(1,2,4,5)	236.66	0.438	95–94–3
TETRACHLORODIBENZOFURAN(2,3,7,8) (M)	8.50	0.255	51207–31–
TETRACHLORODIBENZO-p-DIOXIN(2,3,7,8)	2.21	0.145	1746–01–6

TABLE 4 OF APPENDIX J—FET VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25 °C GREATER THAN OR EQUAL TO 0.1 (Y/X) ATMOSPHERE PER MOLE FRACTION—Continued

[Use with section 2.5.3]

Compound	Y/X	Fet	CAS
TETRACHLOROETHANE(1,1,1,2) (M)	111.11	0.493	630–20–6
TETRACHLOROETHANE(1,1,2,2)	13.86	0.397	79–34–5
TETRACHLOROETHENE	983.34	0.667	127–18–4
TETRACHLOROPHENOL(2,3,4,6)	0.25	0.039	58–90–2
TETRACHLOROPHENOL(2,3,5,6)	6166600.00	0.879	935–95–5
TETRACHLOROPROPENE(1,1,2,3) (M)	499.44	0.562	10436–39–
TETRADECANE	1594.43	0.395	629–59–4
TETRAETHYL LEAD	4494.40	0.659	78–00–2
TETRAETHYLENE GLYCOL (M)	0.71	0.107	112–60–7
TETRAETHYLENE PENTANE	1249.99	0.707	
TETRAETHYLPYROPHOSPHATE (M)	>100000	0.940	107–49–3
TETRAFLUOROETHENE	34722.00	0.761	
TETRAFLUOROMETHANE	264550.00	0.920	
TETRAHYDROBENZALDEHYDE	1.29	0.213	
TETRAHYDROFURAN	2.72	0.322	109–99–9
TETRAHYDRONAPHTHALENE,1,2,3,4-(M)	400.00	0.500	119–64–2
TETRAHYDROPYRAN	6.94	0.381	142–68–7
TETRAHYDROTHIOPHENE	60.56	0.514	
TETRALIN	104.44	0.439	
TETRANITROMETHANE	605.55	0.718	509–14–8
THIOACETAMIDE (M)	7.53	0.375	62–55–5
THIOBENZYL ALCOHOL P (M)	0.69	0.136	100–53–8
THIOBISETHANE, 1,1′	317.78	0.593	
THIOCYANATE (TOTAL AS SCN-) (M)	1555.54	0.602	NA
NATHIOMETHANOL (M)	28.98	0.499	74–93–1
THIOPHENOL(M)	2433.14	0.660	108–98–5
THIOPROPIONAMIDE 2(M)	0.29	0.085	
THIOUREA	8.89	0.472	62–56–6
THIRAM (M)	11716.00	0.621	137–26–8
THYMINE (M)	433.31	0.802	65–71–4
TOLUENE	356.67	0.551	108–88–3
TOLUENE24DIAZOBIS-METATOLUENEDIA(M)	2.38	0.133	
TOLUENESULFONYL CHLORIDE	0.12	0.028	
TOLUIC ALDEHYDE	14.06	0.382	122–78–1
TOLUIDINE (-0)	0.13	0.049	95–53–4
TOLUIDINE HYDROCHLORIDE,o-(M)	588880.00	0.947	636–21–5
TOLUIDINE P	1.06	0.208	106–49–0
TOXAPHENE	271.66	0.416	8001–35–2
trans 1,4 DIMETHYLCYCLOHEXANE	50505.00	0.752	
trans 2 BUTENAL	1.09	0.267	
trans 2 HEPTENE	23148.00	0.724	
trans 2 HEXENAL	2.78	0.295	
trans 2 OCTENAL	13.89	0.358	
trans, trans 2,4 HEXADIENAL	0.56	0.151	
TRIBROMOMETHYLPHOSPHATE (M)	1.93	0.136	
TRIBUTYL PHOSPHOROTRITHIOATE SSS	8.72	0.230	78–48–8
TRIBUTYL TIN ACETATE	386.66	0.386	
TRIBUTYLPHOSPHATE	2193900.00	0.778	126–73–8
TRICHLORO(1,1,2)TRIFLUOROETHANE ((M)	24166.00	0.739	76–13–1
TRICHLORO-1,2,2-TRIFLUOROETHANE,1,1	28996.00	0.693	76–13–1
TRICHLORO-1,3,5-TRIAZINE 2,4,6 (M)	51.22	0.413	108–77–0
TRICHLOROANISOLE 2,3,6 (M)	588880.00	0.940	50375–10–
TRICHLOROBENZENE 1,2,3	437.22	0.472	87–61–6
TRICHLOROBENZENE 1,2,4	106.67	0.417	120–82–1
TRICHLOROBENZENE 1,3,5	1161.10	0.512	108–70–3
TRICHLOROBUTANE 1,2,3 (M)	258890.00	0.910	18338–40–
TRICHLOROETHANE 1,1,1	966.67	0.666	71–55–6
TRICHLOROETHANE 1,1,2	45.77	0.495	79–00–5
TRICHLOROETHYLENE	566.67	0.636	79–01–6
TRICHLOROFLUOROMETHANE	3238.86	0.677	75–69–4
TRICHLOROPHENOL 2,4,5	0.48	0.079	95–95–4
TRICHLOROPHENOL 2,4,6	0.98	0.154	88–06–2
TRICHLOROPROPANE 1,1,1	1611.10	0.819	7789–89–1
TRICHLOROPROPANE(1,1,2)	1611.10	0.703	598–77–6
TRICHLOROPROPANE(1,2,2)	1611.10	0.721	3175–23–3
TRICHLOROPROPANE(1,2,3)	1555.54	0.817	96–18–4
TRICHLOROPROPENE (1,1,2)(M)	403.89	0.569	
TRICOSANE N(M)	5.12	0.270	629–50–5
TRIETHYLAMINE	6.94	0.339	121–44–8

TABLE 4 OF APPENDIX J—FET VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25 °C GREATER THAN OR EQUAL TO 0.1 (Y/X) ATMOSPHERE PER MOLE FRACTION—Continued

[Use with section 2.5.3]

Compound	Y/X	Fet	CAS
TRIETHYLENE GLYCOL(M)	0.55	0.106	112–27–6
TRIETHYLPHOSPHOROTHIOATE,o,o,o-(M)	400.00	0.462	126–68–1
TRIFLUOROETHANE(1,1,1)	4666600.00	0.979	
TRIFLUOROMETHANE	4273.46	0.730	
TRIFLURALIN	8.89	0.230	
TRIISOBUTYLENE	5094.39	0.479	
TRIISOPROPYLAMINE	190.55	0.392	
TRIMELLITIC ANHYDRIDE (M)	0.23	0.046	552–30–7
TRIMETHYL BENZENE, 123	184.57	0.465	
TRIMETHYL-4-NITROANILINE 2,3,5 (M)	500.00	0.484	
TRIMETHYLAMINE	5.79	0.464	75–50–3
TRIMETHYLBENZENE (1,3,5)	326.79	0.502	108–67–3
TRIMETHYLPENTANE 2,2,4	185450.00	0.834	540–84–1
TRIMETHYLSILANOL	8716.44	0.752	
TRINITROBENZENE,sym- (M)	182.49	0.466	99–35–4
TRINITROTOLUENE(2,4,6)	0.76	0.105	118–96–7
TRIPHENYL PHOSPHINE (M)	7.28	0.249	603–35–0
TRIPHENYLMETHANE (M)	194440.00	0.922	516–73–3
TRIPHENYLPHOSPHINE NICKEL CARBON(M)	209.44	0.365	
TRIS (1-AZIRIDINYL) PHOSPHINE SU(M)	13.69	0.304	52–24–4
TRIS (2,3-DIBROMOPROPYL) PHOSPHA(M)	4417800.00	0.939	126–72–7
TRISODIUM NITRILOTRIACETATE (M)	10739.00	0.568	5064–31–3
TRYPAN BLUE(M)	611.11	0.417	72–57–1
URACIL (M)	427.89	0.857	66–22–8
URACIL MUSTARD (M)	611.11	0.525	66–75–1
UREA	14.67	0.582	57–13–6
URETHANE	3.26	0.370	51–79–6
VALERIC ACID (M)	3.73	0.287	109–52–4
VINYL ACETATE	28.21	0.521	108–05–4
VINYL ACETYLENE	1461.97	0.746	
VINYL BROMIDE	375.55	0.693	
VINYL CHLORIDE	1472.00	0.854	75–01–4
VINYL DIHYDROPYRAN	52.89	0.536	
VINYL METHYL ETHER	39.61	0.590	
VINYLCYCLOHEXENE 4(M)	102220.00	0.905	100–40–3
VINYLIDENE CHLORIDE	1438.90	0.680	75–35–4
XYLENE	291.66	0.562	1330–20–7
XYLENE(-m)	413.00	0.549	108–38–3
XYLENE(-o)	271.00	0.569	95–47–6
XYLENE(-p)	413.34	0.561	106–67–9
XYLIDINE dimethylaniline	0.15	0.048	
XYLYL CHLORIDE M (M)	78.33	0.470	620–19–9
XYLYL CHLORIDE O (M)	78.33	0.470	552–45–4

*Molecular structure only approximate.
(M) fraction measured (fm) estimated from Mwt correlation.

TABLE 5 OF APPENDIX J—FE VALUES FOR EMISSIONS FROM BIOLOGICAL TREATMENT SYSTEMS (FET VALUES)

[Use with section 2.5.3]

Henry's Law Constant	Fet Value
0.002	0.001
0.004	0.002
0.006	0.003
0.01	0.005
0.014	0.007
0.02	0.010
0.03	0.015
0.04	0.020
0.05	0.25
0.06	0.030
0.07	0.035
0.08	0.040
0.09	0.045
0.1	0.050
0.158	0.060
0.22	0.070
0.27	0.080

TABLE 5 OF APPENDIX J—FE VALUES FOR EMISSIONS FROM BIOLOGICAL TREATMENT SYSTEMS (FET VALUES)—Continued

[Use with section 2.5.3]

Henry's Law Constant	Fet Value
0.28	0.090
0.285	0.10
0.288	0.11
0.354	0.12
0.45	0.13
0.5	0.14
0.55	0.15
0.628	0.16
0.71	0.17
0.85	0.18
1.01	0.19
1.10	0.20
1.2	0.21
1.3	0.22
1.75	0.23
1.93	0.24
2.03	0.25
2.3	0.26
2.6	0.27
2.8	0.28
2.9	0.29
3	0.30
3.3	0.31
4.17	0.33
4.6	0.35
8	0.37
9.6	0.39
11	0.40
13	0.41
15	0.43
16	0.44
17	0.45
75	0.47
144	0.50
206	0.52
411	0.54
500	0.56
615	0.58
716	0.60
811	0.62
1000	0.64
4000	0.66
8000	0.68
9000	0.70
11000	0.72
12000	0.74
20000	0.76
30000	0.78
50000	0.80
210000	0.82

BILLING CODE 6560–50–P

FORM 1 OF APPENDIX J--CALCULATION OF THE HENRY'S LAW CONSTANT AT 25°C FOR A COMPOUND IN A SEALED BATCH TEST (i.e., Two Phase Closed System) (use with Section 2.1.3.1 and 2.4.3.1.1)

NAME OF THE FACILITY _____
WASTE STREAM IDENTIFICATION _____
COMPOUND _____
REACTOR HEADSPACE VOLUME, (L) 1 _____
REACTOR LIQUID VOLUME (L) 2 _____
TEMPERATURE of the liquid in the unit (deg.C) 3 _____

A Data set	B Time (hr)	C Liquid Conc. (mg/L)	D Gas Conc. (mg/L)	E Keq D/C
1	_____	_____	_____	_____
2	_____	_____	_____	_____
3	_____	_____	_____	_____
4	_____	_____	_____	_____
5	_____	_____	_____	_____

Temperature in degrees Kelvin.
Add 273.16 to the number on line 3. 4 _____
Molar ratio. Multiply the number on line 4 by 4.555. 5 _____
Henry's law value (mg/L gas per mg/L liquid).
The average value in column E. 6 _____
Henry's law value (mole fract. gas per mole fract. liquid)
Multiply line 6 by line 5. 7 _____

FORM 2 OF APPENDIX J--DATA FORM FOR THE CALCULATION OF THE HENRY'S LAW CONSTANT AT 25°C FROM THE STRIPPING IN AN AERATED BATCH TEST (i.e., open system) (use with Section 2.1.3.2 and 2.4.3.1.2).

NAME OF THE FACILITY _____
WASTE STREAM IDENTIFICATION _____
COMPOUND _____
Concentration basis (liquid or gas) _____

TEMPERATURE of the liquid in the unit (deg.C) 1_____
GAS FLOW RATE (L/hr) 2 _____
LIQUID VOLUME (L) 3_____
Co concentration measurement at time=0 (mg/L) 4_____

A data point	B time (hr)	C Concentration, C (mg/L)	D C/Co	E -ln(C/Co)
1	_____	_____	_____	_____
2	_____	_____	_____	_____
3	_____	_____	_____	_____
4	_____	_____	_____	_____
5	_____	_____	_____	_____
6	_____	_____	_____	_____

CALCULATIONS. Use additional lines as needed in an expansion of the above table. Plot the values in column E (y axis) vs the data in column B (x axis). Reject outliers. Curve fit with a straight line. Calculate the slope and enter the slope on line 7.

Temperature in degrees Kelvin.
Add 273.16 to the number on line 1. 5_____
MOLAR RATIO. Multiply the number on line 5 by 4.555. 6_____
Slope of the plot of -ln(C/Co) vs time (per hour) 7_____

Calculated Keq value (mg/L gas per mg/L liquid). Divide the number on line 7 by the number on line 2 and multiply the results by the number on line 3.
Enter the results on line 8. 8_____

Henry's law value (mole fract. gas per mole fract. liquid)
Multiply the number on line 8 by the number on line 6. 9_____

FORM 3 OF APPENDIX J--HOW TO SUBTRACT A CHEMICAL FROM A METHOD 25D CONCENTRATION
(use with Section 2.3)

NAME OF THE FACILITY _____
STREAM IDENTIFICATION _____

1. Report the average value of the Method 25D samples. You must take at least the minimum number of samples required by the referencing subpart. Report the results for each sample taken (ppmw). If you include any samples, you must explain why the samples should not be included in the average.

Measurements of volatile content with EPA Method 25D
Enter each result on lines 1-5 (ppmw)

1 _____
2 _____
3 _____
4 _____
5 _____

2. Report average value of Method 25D results.

Average value of Method 25D - results (ppmw)	1.	

3. Subtract from average value of Method 25D samples.

No.	Chemical (A)	Concentration (ppmw) (B)	FM M25D (C)	FM Adjusted Concentration (ppmw) (D) = (B)*(C)
1				
2				
3				
4				
5				
6				
7				
8				
9				

10				
11				
12				
13				
14				
15				
16				
17				
18				
19				

Sum of adjusted concentrations.	2.
Total Method 25D concentration adjusted to subtract chemicals Subtract Line 2 from Line 1 (Do not enter less than zero)	3.

FORM 4 OF APPENDIX J--EXAMPLE OF HOW TO SUBTRACT A CHEMICAL FROM A METHOD 25D CONCENTRATION (use with Section 2.3)

NAME OF THE FACILITY Plant A
STREAM IDENTIFICATION Waste 3A

1. Report the average value of the Method 25D samples. You must take at least the minimum number of samples required by the referencing subpart. Report the results for each sample taken (ppmw). If you include any samples, you must explain why the samples should not be included in the average.

Measurements of volatile content with EPA Method 25D 100

Enter each result on lines 1-5 (ppmw)

2	57
3	88
4	110
5	

2. Report average value of Method 25D results.

Average value of Method 25D - results (ppmw)	1.	88.75

3. Subtract from average value of Method 25D samples.

No.	Chemical (A)	Concentration (ppmw) (B)	FM M25D (C)	FM Adjusted Concentration (ppmw) (D) = (B)*(C)
1	Dichlorophenol 2,5	150	0.151	22.65

Sum of adjusted concentrations.	2.	22.65

Total Method 25D concentration adjusted to subtract chemicals. Subtract Line 2 from Line 1 (Do not enter less than zero.)	3.	66.1

FORM 5 OF APPENDIX J--HOW TO CALCULATE A HENRY'S LAW CONSTANT FROM A HENRY'S LAW CONSTANT AT A DIFFERENT TEMPERATURE FOR THE SAME CHEMICAL

(use with Sections 2.1.4, 2.4.3.2, and 2.6)

NAME OF THE FACILITY		
CHEMICAL FOR EVALUATION		
MEASURED HENRY'S LAW CONSTANT (atm/mol fraction)	1	
MEASUREMENT TEMPERATURE (deg.C)	2	
ADJUSTMENT TEMPERATURE FOR HENRY'S LAW CONSTANT (deg.C)	3	
WATER8 PREDICTED HENRY'S LAW CONSTANT AT THE MEASUREMENT TEMPERATURE	4	
WATER8 PREDICTED HENRY'S LAW CONSTANT AT THE ADJUSTMENT TEMPERATURE	5	
RATIO OF HENRY'S LAW CONSTANTS. DIVIDE THE NUMBER ON LINE 5 BY THE NUMBER ON LINE 4.	6	
ADJUSTED HENRY'S LAW CONSTANT. MULTIPLY THE NUMBER ON LINE 6 BY THE NUMBER ON LINE 1.	7	

Discuss the assumptions and data inputs used for WATER8

BILLING CODE 6560–50–C

FORM 6 OF APPENDIX J—GENERAL SYSTEM SPECIFICATIONS (use with Section 2.5.2)

You must use site-specific values for parameters 5, 6, and 10.

5 Humidity of inlet air (%) ..... _____
6 Temperature of air (°C) ..... _____
10 Wind velocity (cm/s at 10 m) ..... _____

For the rest of items, you may use the default values in WATER8 or site-specific values. You should document the methods used. You only have to report site-specific data on this form; you do not have to report the WATER8 default values.

1 Total water added at the unit (l/s) ..... _____
2 Area of openings at unit (cm^2) ..... _____
3 Radius of drop pipe (cm) ..... _____
4 Drop length to conduit (cm) ..... _____
7 Drain air velocity (ft/min) ..... _____
8 Manhole air velocity (ft/min) ..... _____
9 Conduit air velocity (ft/min) ..... _____
11 Distance to next unit (cm) ..... _____
12 Slope of underflow conduit ..... _____
13 Friction factor liquid ..... _____
14 Friction factor gas ..... _____
15 Radius of underflow conduit (cm) ..... _____
16 Underflow Temperature (°C) ..... _____
17 Oscillation cycle time (min) ..... _____
18 Design collection velocities (ft/s) ..... _____
19 Design branch line fraction full ..... _____
20 Fraction of wind speed on open drains ..... _____
21 Number of iterations for calculations ..... _____
22 Specified line vent rates, =1 ..... _____
23 Iterations in vent convergence pass ..... _____
24 Number of passes in vent conv. ..... _____
25 Allowable vent error ..... _____
26 Acceleration factor for vent convergence ..... _____
27 Change in pressure ..... _____
28 Oil molecular weight ..... _____
29 Oil density (g/cc) ..... _____

FORM 7 OF APPENDIX J—DESCRIPTION OF GENERAL COLLECTION ELEMENTS (use with Section 2.5.2)

Applicable units include closed trenches, open hub drains, covered drains, openings in a conduit, and manhole covers. Waste may be added either at the unit or through a drop pipe. Each unit has a potential vent or waste addition, followed by an enclosed conduit that ends at the next downstream unit.

1 Description of unit ..... _____
2 Underflow Temperature (°C) ..... _____
3 Total water added at the unit (l/s) ..... _____

The following three specifications refer to the potential vent or waste drop pipe.

4 Area of openings at unit (cm^2) ..... _____
5 Radius of drop pipe (cm) ..... _____
6 Drop length to conduit (cm) ..... _____

The term open surface refers to the surface near the vent or waste addition.

7 Open surface=1 ..... _____
8 Subsurface entrance=1 ..... _____
9 Subsurface exit =1 ..... _____

The following three specifications refer to the enclosed conduit downstream of the unit.

10 Radius of underflow conduit (cm) ..... _____
11 Distance to next unit (cm) ..... _____
12 Slope of underflow conduit ..... _____

The specified air velocity is only used if Form 6 general system specification 22 equals 1.

16 Velocity air at opening (ft/min) ..... _____
17 Municipal waste in conduit =1 ..... _____
18 Assume equilibrium in unit, =1 ..... _____

If waste is added at the unit, specify the waste number. The waste composition is described elsewhere.

19 Waste 1 added to system at unit number ..... _____
20 Waste 2 added to system at unit number ..... _____
21 Waste 3 added to system at unit number ..... _____

FORM 8 OF APPENDIX J—THE DESCRIPTION OF OPEN TRENCHES (use with Section 2.5.2)

1 Description of unit ..... _____
2 Underflow T (°C) ..... _____
3 Total water added at the unit (l/s) ..... _____
8 Subsurface entrance=1 ..... _____
9 Subsurface exit=1 ..... _____
10 Width of underflow conduit (cm) ..... _____
11 Distance to next unit (cm) ..... _____

12 Slope of underflow conduit ..... _____
19 Waste 1 added to system at unit number ..... _____
20 Waste 2 added to system at unit number ..... _____
21 Waste 3 added to system at unit number ..... _____

FORM 9 OF APPENDIX J—THE DESCRIPTION OF AN OPEN SUMP (use with Section 2.5.2)

1. Description of unit ..... _____
2. Underflow Temperature (°C) ..... _____
3. Total water added at the unit (l/s) ..... _____
4. Area of openings at unit (cm^2) ..... _____
5. Radius of drop pipe (cm) ..... _____
6. Drop length to conduit (cm) ..... _____
7. Open surface=1 ..... _____
8. Subsurface entrance=1 ..... _____
9. Subsurface exit =1 ..... _____
10. Radius of underflow conduit (cm) ..... _____
11. Distance to next unit (cm) ..... _____
12. Slope of underflow conduit ..... _____
13. Area of surface(cm^2) ..... _____
14. Flow entrance depth under surface (cm) ..... _____
15. Depth of liquid in sump (cm) ..... _____
16. Velocity air at opening (ft/min) ..... _____
17. Municipal waste in conduit =1 ..... _____
18. Assume equilibrium in unit, =1 ..... _____
19. Waste 1 added to system at unit number ..... _____
20. Waste 2 added to system at unit number ..... _____
21. Waste 3 added to system at unit number ..... _____

FORM 10 OF APPENDIX J—THE DESCRIPTION OF AN OPEN J DRAIN (use with Section 2.5.2)

1. Description of unit ..... _____
2. Underflow Temperature (°C) ..... _____
3. Total water added at the unit (l/s) ..... _____
4. Distance to trap liquid surface (cm) ..... _____
5. Radius of drop pipe (cm) ..... _____
6. Drop length to conduit (cm) ..... _____
7. Open surface=1 ..... _____
8. Subsurface entrance=1 ..... _____
9. Subsurface exit =1 ..... _____
10. Radius of underflow conduit (cm) ..... _____
11. Distance to next unit (cm) ..... _____
12. Slope of underflow conduit ..... _____
13. Depth of water level (cm) ..... _____
14. Displacement in oscillation (cm) ..... _____
17. Municipal waste in conduit =1 ..... _____
18. Assume equilibrium in unit, =1 ..... _____
19. Waste 1 added to system at unit number ..... _____
20. Waste 2 added to system at unit number ..... _____
21. Waste 3 added to system at unit number ..... _____

FORM 11 OF APPENDIX J—THE DESCRIPTION OF SEALED COLLECTION ELEMENTS (use with Section 2.5.2)

1. Description of unit ..... _____
2. Underflow Temperature © ..... _____
3. Total water added at the unit (l/s) ..... _____
4. Area of openings at unit (cm2) ..... _____
5. Radius of drop pipe (cm) ..... _____
6. Drop length to conduit (cm) ..... _____
7. Open surface=1 ..... _____
8. Subsurface entrance=1 ..... _____
9. Subsurface exit =1 ..... _____
10. Radius of underflow conduit (cm) ..... _____
11. Distance to next unit (cm) ..... _____
12. Slope of underflow conduit ..... _____
17. Municipal waste in conduit =1 ..... _____
18. Assume equilibrium in unit, =1 ..... _____
19. Waste 1 added to system at unit number ..... _____
20. Waste 2 added to system at unit number ..... _____
21. Waste 3 added to system at unit number ..... _____

FORM 12 OF APPENDIX J—THE DESCRIPTION OF WEIRS AND WATERFALLS (use with Section 2.5.2)

1. Description of unit ..... _____
2. Underflow Temperature (°C) ..... _____
3. Total water added at the unit (l/s) ..... _____
4. Waterfall width at surface (m) ..... _____
5. Waterfall drop height (cm) ..... _____
6. Tailwater depth (m) ..... _____
7. Open surface=1 ..... _____
8. Subsurface entrance=1 ..... _____

9. Subsurface exit =1 ..... _____
10. Radius of underflow conduit (cm) ..... _____
11. Distance to next unit (cm) ..... _____
12. Slope of underflow conduit ..... _____
19. Waste 1 added to system at unit number ..... _____
20. Waste 2 added to system at unit number ..... _____
21. Waste 3 added to system at unit number ..... _____

FORM 13 OF APPENDIX J—THE DESCRIPTION OF LIFT STATIONS (use with Section 2.5.2)

1. Description of unit ..... _____
2. Underflow Temperature (°C) ..... _____
3. Total water added at the unit (l/s) ..... _____
4. Area of openings at unit (cm^2) ..... _____
5. Radius of drop pipe (cm) ..... _____
6. Drop length to conduit (cm) ..... _____
7. Open surface=1 ..... _____
8. Subsurface entrance=1 ..... _____
9. Ssubsurface exit =1 ..... _____
10. Radius of underflow conduit (cm) ..... _____
11. Distance to next unit (cm) ..... _____
12. Slope of underflow conduit ..... _____
13. Fractional approach to equilibrium ..... _____
14. If covered, then enter 1 ..... _____
19. Waste 1 added to system at unit number ..... _____
20. Waste 2 added to system at unit number ..... _____
21. Waste 3 added to system at unit number ..... _____

Definitions of Terms

Area of openings at unit (cm^2) The area that can vent headspace gas or permit outside air to enter the collection system. This area is generally less than or equal to the area of the drop pipe opening.

Area of surface (cm^2) (sump) The area of the surface exposed to the wind or to the headspace in a sump. This area generally corresponds to the physical area of the sump exposed surface horizontal cross-section.

Assume equilibrium in unit, =1 If condition are present in the unit such that equilibrium is expected (agitated surface, sealed waterfall, splash loading, low gas and liquid flow, or other factors) enter a 1 as a computer flag.

Cover An enclosure that prevents the exchange of ambient air and the headspace air. If there are openings in the cover, then air may be exchanged with the headspace air. The openings in the cover are specified as *area of openings at unit*.

Covered, then enter 1 The input value is a computer program flag that specifies that the unit is sealed and outside wind will not blow across the surface of the liquid in the unit. If the unit is covered, this does not indicate that the surface of the liquid is not exposed to headspace gas.

Depth of liquid in sump (cm) The depth in centimeters from the top of the liquid surface in the sump to the base of the sump. The depth is always positive.

Depth of water level (cm) (J trap) The depth in centimeters from the top of the liquid surface in the water seal to the base of the water seal. This depth is always positive and would correspond to the wet distance on a dip-stick. This variable may be used for periodically active hubs.

Description of unit This is a general description that identifies the unit that is being specified. Examples can include ''Tank A45'', ''Drain E–17'', ''Sewer WW4'', or other description. This description will appear on some of the reports.

Displacement in oscillation (cm) (J trap) Distance of surface level fluctuation in the J trap. The value of the displacement is used in an air emission model to estimate air exchange.

Distance to next unit (cm) The distance of the run of the underflow conduit that connects the unit to the next unit downstream.

Distance to trap liquid surface (cm) (J trap) The depth in centimeters from the top of the open hub top to the liquid surface within the J trap. The depth is always positive and would correspond to the dry distance on a dip-stick.

Drop length to conduit (cm) The length in centimeters from the top of the hub in the drop pipe to the typical liquid surface in the underflow conduit. The length is always positive.

Drop length to conduit (cm) (J trap) The length in centimeters from the water seal in the J trap to the typical liquid surface in the underflow conduit. The length is always positive.

Flow entrance depth under surface (cm) The length between the surface of the liquid in the sump and the base of the inlet conduit. This length is always positive and represents the effective depth of flow for the mass transfer model.

Fractional approach to equilibrium The fraction of equilibrium between the liquid and the headspace in the lift station unit. The lift station model uses this value as an input parameter because analysis of laboratory data indicated that the vent gas in an enclosed unit with a waterfall was approximately 50% of the equilibrium value. For water falling in a more open unit, consider using the waterfall unit instead of the lift station model.

Headspace The headspace is the air over the wastewater in the enclosed underflow conduit.

Municipal waste in conduit=1 The input value is a computer program flag which identifies which mass transfer model is used for the calculations. A value of zero is the default value and the mass transfer is calculated using the trench model correlation derived from Owens. A value of 1 would calculate mass transfer through the Parkhurst-Pomeroy correlation for municipal sewers. Additional options for mass transfer options may be added in the future.

Open surface=1 The input value is a computer program flag which indicates that the surface of the unit receiving the waste is open to the atmosphere. Zero is the default value (closed unit). Many of the collection system units have this option for flexibility. This flag does not refer to the underflow conduit, only to the units. The flow of headspace in the drop pipe will be of less importance if the drop pipe connects to a unit that is open.

Open surface=1 (J trap) The input value is a computer program flag which indicates that the surface of the unit receiving the waste is open to the atmosphere. Zero is the default value, and it is considered very unusual to use an open J trap for discharge into a unit with an exposed surface.

Open surface=1 (sump) The input value is a computer program flag which indicates that the surface of the unit receiving the waste is open to the atmosphere. Zero is the default value, and a value of 1 indicates that there are potential air emissions from wind blowing across the surface. Grates and perforated covers are considered characteristic of an open surface.

Oscillation cycle time (min) The cycle time or period of the water level rise and drop in an open water trap. Variations in the internal headspace pressure will cause water level oscillations.

Radius of drop pipe (cm) The radius in centimeters in the drop pipe that connects the hub to the unit. There is no water seal on the drop pipe (see J trap).

Radius of drop pipe (cm) (J trap) The radius in centimeters in the drop pipe forming a water seal in the J trap. The drop pipe connects the hub to the water seal in the J trap.

Radius of underflow conduit (cm) One half the diameter of a circular exiting pipe that connects the unit to the next unit downstream. This pipe is considered closed and not exposed to leaks and air exchange with the environment during the run of the pipe. If the conduit is not closed, consider the trench model.

Rise The difference in elevation in an underflow conduit that connects collection system units.

Run The path in an underflow conduit that connects collection system units.

Slope of underflow conduit The ratio of the rise to the run in the underflow conduit. The slope is always positive and measured from downstream to upstream in each run.

Subsurface entrance=1 This input value is a computer program flag which indicates that the headspace is blocked from flowing into or out of the upstream underflow conduits. A value of zero indicates that there is no headspace blockage.

Subsurface exit=1 This input value is a computer program flag which indicates that the headspace is blocked from flowing into or out of the underflow conduit downstream. A value of zero indicates that there is no headspace blockage.

Total water added at the unit (l/s) This is an optional specification of the total amount of water added to the collection system at the unit. This specification is only used if water is added to the specified wastewater streams at the unit. This optional specification could be used if the total wastewater flow at the unit differed from the sum of the flows of the wastes upstream of the unit.

Underflow conduit The exiting pipe or trench that connects the unit to the next unit downstream. This conduit may be (1) closed and not exposed to leaks and air exchange with the environment during the run of the pipe or (2) exposed to leaks and air exchange with the environment.

Underflow Temperature (C) The entrance temperature of the liquid into the unit. The temperature of the waste stream is specified separately.

Velocity air at opening (ft/min) The velocity of flow into the unit at the specified unit openings (see area of openings at unit). This value is only used if a special flag is set. (See Form 6 general specifications 22. Specified line vent rates, =1)

Waste added to system at unit number The input information of waste streams into the collection system units is accomplished by specifying the waste number. The waste number refers to a data base element that includes the drop distance into the hub, the flow rate, the temperature, concentrations, the oil content and other information.

Waterfall drop height (cm) The distance from the top of the waterfall to the tailwater surface level (unit liquid underflow level) . This value is always positive.

Waterfall: Open surface=1 The input value is a computer program flag which indicates that the waterfall is open to the atmosphere. Zero is the default value (waterfall is enclosed).

Waterfall: tailwater depth (m) The depth of flow in the underflow conduit under the waterfall.

Waterfall width at surface (m) The width of the waterfall across the at the upper liquid level. The flow rate is used with the width to estimate the thickness of the falling water film.

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federal register

Wednesday
December 9, 1998

Part III

Department of Housing and Urban Development

Statutorily Mandated Designation of Difficult Development Areas, and Supplemental Designation of Qualified Census Tracts, for Section 42 of the Internal Revenue Code of 1986; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4401–N–01]

Statutorily Mandated Designation of Difficult Development Areas, and Supplemental Designation of Qualified Census Tracts, for Section 42 of the Internal Revenue Code of 1986

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: This document designates ''Difficult Development Areas'' and supplemental ''Qualified Census Tracts'' for purposes of the Low-Income Housing Tax Credit (''LIHTC'') under section 42 of the Internal Revenue Code of 1986. The United States Department of Housing and Urban Development (''HUD'') makes new Difficult Development Area designations annually and makes supplemental designations of Qualified Census Tracts at this time because of recent legislation. The corrected designations of ''Qualified Census Tracts'' under section 42 of the Internal Revenue Code published May 1, 1995 (60 FR 21246), as amended by the supplemental designations of ''Qualified Census Tracts'' under section 42 of the Internal Revenue Code published June 25, 1998 (63 FR 34748), are not affected by this Notice.

FOR FURTHER INFORMATION CONTACT: With questions on how areas are designated and on geographic definitions, Kurt G. Usowski, Economist, Division of Economic Development and Public Finance, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708–0426, e-mail Kurt__G.__Usowski@hud.gov. With specific legal questions pertaining to section 42 and this notice, Chris Wilson, Attorney, Office of the Chief Counsel, Pass Throughs and Special Industries Branch 5, Internal Revenue Service, 1111 Constitution Ave, N.W., Washington, DC, 20244, telephone (202) 622–3040, fax (202) 622–4779; or Harold J. Gross, Senior Tax Attorney, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708–3260, e-mail JERRY__GROSS@hud.gov. For questions about the ''HUBZones'' program, Michael P. McHale, Assistant Administrator for Procurement Policy, Office of Government Contracting, Suite 8800, Small Business Administration, 409 Third Street, S.W., Washington, D.C. 20416, telephone (202) 205–6731, fax (202) 205–7324, e-mail michael.mchale@sba.gov. A text telephone is available for persons with hearing or speech impairments at (202) 708–9300. (These are not toll-free telephone numbers.) Additional copies of this notice are available through HUDUSER at (800) 245–2691 for a small fee to cover duplication and mailing costs.

COPIES AVAILABLE ELECTRONICALLY: This notice is available electronically on the Internet (World Wide Web) at http://www.huduser.org/ under the heading ''Data Available from HUDUser.''

SUPPLEMENTARY INFORMATION:

This Document

The designations of Difficult Development Areas in this document are based on FY 1998 Fair Market Rents (''FMRs''), FY 1998 income limits and 1990 census population counts as explained below. Section 508(c) of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, approved October 21, 1998) requires HUD to treat certain areas differently in making Difficult Development Area designations than they had been treated in past designations. The designations of Qualified Census Tracts in newly designated metropolitan areas and the nonmetropolitan parts of States affected by the most recent metropolitan area designation and for the U.S. Territories of the Virgin Islands, American Samoa, Guam, Northern Marianas Islands, and Palau, are made necessary by the recently enacted ''HUBZones'' provisions of the Small Business Reauthorization Act of 1997, which incorporate section 42 Qualified Census Tracts by reference. These designations are made based on 1990 Census data.

Background

The U.S. Treasury Department and the Internal Revenue Service thereof are authorized to interpret and enforce the provisions of the Internal Revenue Code of 1986 (the ''Code''), including the Low-Income Housing Tax Credit (''LIHTC'') found at section 42 of the Code (26 U.S.C. 42) as amended. The Secretary of HUD is required to designate Difficult Development Areas and Qualified Census Tracts by section 42(d)(5)(C) of the Code.

In order to assist in understanding HUD's mandated designation of Difficult Development Areas and Qualified Census Tracts for use in administering section 42 of the Code, a summary of section 42 is provided. The following summary does not purport to bind the Treasury or the IRS in any way, nor does it purport to bind HUD as HUD has no authority to interpret or administer the Code, except in those instances where it has a specific delegation.

Summary of Low Income Housing Tax Credit

The LIHTC is a tax incentive intended to increase the availability of low income housing. Section 42 provides an income tax credit to owners of newly constructed or substantially rehabilitated low-income rental housing projects. The dollar amount of the LIHTC available for allocation by each state (the ''credit ceiling'') is limited by population. Each state is allocated credit based on $1.25 per resident. Also, states may carry forward unused or returned credit for one year; if not used by then, credit goes into a national pool to be allocated to states as additional credit. State and local housing agencies allocate the state's credit ceiling among low-income housing buildings whose owners have applied for the credit.

The credit allocated to a building is based on the cost of units placed in service as low-income units under certain minimum occupancy and maximum rent criteria. In general, a building must meet one of two thresholds to be eligible for the LIHTC: either 20 percent of units must be rent-restricted and occupied by tenants with incomes no higher than 50 percent of the Area Median Gross Income (''AMGI''), or 40 percent of units must be rent restricted and occupied by tenants with incomes no higher than 60 percent of AMGI. The term ''rent-restricted'' means that gross rent, including an allowance for utilities, cannot exceed 30 percent of the tenant's imputed income limitation (i.e., 50 percent or 60 percent of AMGI). The rent and occupancy thresholds remain in effect for at least 15 years, and building owners are required to enter into agreements to maintain the low income character of the building for at least an additional 15 years.

The LIHTC reduces income tax liability dollar for dollar. It is taken annually for a term of ten years and is intended to yield a present value of either (1) 70 percent of the ''qualified basis'' for new construction or substantial rehabilitation expenditures that are not federally subsidized (i.e., financed with tax-exempt bonds or below-market federal loans), or (2) 30 percent of the qualified basis for the acquisition of existing projects or projects that are federally subsidized. The actual credit rates are adjusted monthly for projects placed in service

after 1987 under procedures specified in section 42. Individuals can use the credit up to a deduction equivalent of $25,000. This equals $9,900 at the 39.6 percent maximum marginal tax rate. Individuals cannot use the credit against the alternative minimum tax. Corporations, other than S or personal service corporations, can use the credit against ordinary income tax. They cannot use the credit against the alternative minimum tax. These corporations can also deduct the losses from the project.

The qualified basis represents the product of the ''applicable fraction'' of the building and the ''eligible basis'' of the building. The applicable fraction is based on the number of low income units in the building as a percentage of the total number of units, or based on the floor space of low income units as a percentage of the total floor space in the building. The eligible basis is the adjusted basis attributable to acquisition, rehabilitation, or new construction costs (depending on the type of LIHTC involved). These costs include amounts chargeable to capital account incurred prior to the end of the first taxable year in which the qualified low income building is placed in service or, at the election of the taxpayer, the end of the succeeding taxable year. In the case of buildings located in designated Qualified Census Tracts or designated Difficult Development Areas, eligible basis can be increased up to 130 percent of what it would otherwise be. This means that the available credit also can be increased by up to 30 percent. For example, if the 70 percent credit is available, it effectively could be increased up to 91 percent.

Under section 42(d)(5)(C) of the Code, a Qualified Census Tract is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income less than 60 percent of the AMGI. There is a limit on the amount of Qualified Census Tracts in any Metropolitan Statistical Area (''MSA'') or Primary Metropolitan Statistical Area (''PMSA'') that may be designated to receive an increase in eligible basis: all of the designated census tracts within a given MSA/PMSA may not together contain more than 20 percent of the total population of the MSA/PMSA. For purposes of HUD designations of Qualified Census Tracts, all non-metropolitan areas in a state are treated as if they constituted a single metropolitan area.

Section 42 defines a Difficult Development Area as any area designated by the Secretary of HUD as an area that has high construction, land, and utility costs relative to the AMGI. Again, limits apply. All designated Difficult Development Areas in MSAs/PMSAs may not contain more than 20 percent of the aggregate population of all MSAs/PMSAs, and all designated areas not in metropolitan areas may not contain more than 20 percent of the aggregate population of all non-metropolitan counties.

In the last general designation of Qualified Census Tracts published May 1, 1995 (60 FR 21246), no tract designations were made in the U.S. Territories of the Virgin Islands, American Samoa, Guam, Northern Marianas Islands, and Palau, because they were all designated ''Difficult Development Areas'' under section 42 of the Internal Revenue Code—making the designation of Qualified Census Tract superfluous. HUD is again designating the U.S. Territories of the Virgin Islands, American Samoa, Guam, Northern Marianas Islands, and Palau, as Difficult Development Areas and expects them to maintain their eligibility for designation for the foreseeable future. However, the recently enacted ''HUBZones'' provisions of the Small Business Reauthorization Act of 1997 (111 Stat. 2627) incorporate section 42 Qualified Census Tracts by reference, making it necessary to revise the designation of Qualified Census Tracts to ensure legal compliance with this new program. The following changes in MSA/PMSA definitions were made after HUD's last designation of Qualified Census Tracts.

New MSA (MSA No.)	Component counties
Missoula, MT MSA (5140)	Missoula County, MT.

Explanation of HUD Designation Methodology

A. Qualified Census Tracts

In developing this revised list of LIHTC Qualified Census Tracts, HUD used 1990 Census data and the MSA/PMSA definitions established by the Office of Management and Budget (''OMB'') in OMB Bulletin No. 98–06 on June 23, 1998. Beginning with the 1990 census, tract-level data are available for the entire country. Generally, in metropolitan areas these geographic divisions are called census tracts while in most non-metropolitan areas the equivalent nomenclature is Block Numbering Area (''BNA''). BNAs are treated as census tracts for the purposes of this Notice.

The LIHTC Qualified Census Tracts were determined as follows:

1. A census tract must have 50% of its households with incomes below 60% of the AMGI to be eligible. HUD has defined 60% of AMGI as 120% of HUD's Very Low Income Limits (VLILs), which are based on 50% of area median family income, adjusted for high cost and low income areas. The 1994 income estimates were then deflated to 1989 dollars, so they would match the 1990 Census income data.

2. For each census tract, the percentage of households below the 60% income standard was determined by (a) calculating the average household size of the census tract, (b) applying the income standard after adjusting it to match the average household size, and (c) calculating the number of households with incomes below the income standard.

3. Qualified Census Tracts are those in which 50% or more of the households are income eligible and the population of all census tracts that satisfy this criterion does not exceed 20% of the total population of the respective area.

4. In areas where more than 20% of the population qualifies, census tracts are ordered from the highest percentage of eligible households to the lowest. Starting with the highest percentage, census tracts are included until the 20% limit is exceeded. If a census tract is excluded because it raises the percentage above 20%, then subsequent census tracts are considered to determine if a census tract with a smaller population could be included without exceeding the 20% limit.

B. Difficult Development Areas

In developing the list of Difficult Development Areas, HUD compared incomes with housing costs. HUD used 1990 Census data and the MSA/PMSA definitions as published by the Office of Management and Budget in OMB Bulletin No. 98–06 on June 23, 1998, *with the exceptions described in section C., below*. The basis for these comparisons was the fiscal year (''FY'') 1998 HUD income limits for Very Low Income Households and Fair Market Rents (''FMRs'') used for the section 8 Housing Assistance Payments Program. The procedure used in making these calculations follows:

1. For each MSA/PMSA and each non-metropolitan county, a ratio was calculated. This calculation used the FY 1998 two-bedroom FMR and the FY 1998 four-person VLIL. The numerator of the ratio was the area's FY 1998 FMR. The denominator of the ratio was the monthly LIHTC income-based rent limit calculated as 1/12 of 30 percent of 120 percent of the area's VLIL (where 120

percent of the VLIL was rounded to the nearest $50 and not allowed to exceed 80 percent of the AMGI in areas where the VLIL is adjusted upward from its 50 percent of AMGI base).

2. The ratios of the FMR to the LIHTC income-based rent limit were arrayed in descending order, separately, for MSAs/PMSAs and for non-metropolitan counties.

3. The Difficult Development Areas are those with the highest ratios cumulative to 20 percent of the 1990 population of all metropolitan areas and of all non-metropolitan counties.

C. Application of Population Caps to Difficult Development Area Determinations

In identifying Difficult Development Areas and Qualified Census Tracts, HUD applied various caps, or limitations, as noted above. The cumulative population of metropolitan Difficult Development Areas cannot exceed 20 percent of the cumulative population of all metropolitan areas and the cumulative population of nonmetropolitan Difficult Development Areas cannot exceed 20 percent of the cumulative population of all nonmetropolitan counties.

For Qualified Census Tracts, section 42(d)(5)(C)(ii)(II) of the Code specifies that the population of designated census tracts within a metropolitan area cannot exceed 20% of the population of that metropolitan area. Similarly, for census tracts/block numbering areas (BNAs) located outside metropolitan areas, the population of designated census tracts/BNAs cannot exceed 20% of the population of the non-metropolitan counties in a State or equivalent area.

In applying these caps, HUD established procedures to deal with how to treat small overruns of the caps. The remainder of this section explains the procedure. In general, HUD stops selecting areas when it is impossible to choose another area without exceeding the applicable cap. The only exceptions to this policy are when the next eligible excluded area contains either a large absolute population or a large percentage of the total population, or the next excluded area's ranking ratio as described above was identical (to four decimal places) to the last area selected, and its inclusion resulted in only a minor overrun of the cap. Thus for both the designated metropolitan and nonmetropolitan Difficult Development Areas there are minimal overruns of the caps. HUD believes the designation of these additional areas is consistent with the intent of the legislation. Some latitude is justifiable because it is impossible to determine whether the 20 percent cap has been exceeded, as long as the apparent excess is small, due to measurement error. Despite the care and effort involved in a decennial census, it is recognized by the Census Bureau, and all users of the data, that the population counts for a given area and for the entire country are not precise. The extent of the measurement error is unknown. Thus, there can be errors in both the numerator and denominator of the ratio of populations used in applying a 20 percent cap. In circumstances where a strict application of a 20 percent cap results in an anomalous situation, recognition of the unavoidable imprecision in the census data justifies accepting *small* variances above the 20 percent limit.

D. Exceptions to OMB Definitions of MSAs/PMSAs and Other Geographic Matters

As stated in OMB Bulletin 98–06 defining metropolitan areas:

> OMB establishes and maintains the definitions of the [Metropolitan Areas] solely for statistical purposes * * * OMB does not take into account or attempt to anticipate any nonstatistical uses that may be made of the definitions * * * We recognize that some legislation specifies the use of metropolitan areas for programmatic purposes, including allocating Federal funds.

HUD makes exceptions to OMB definitions in calculating FMRs by deleting counties from metropolitan areas whose OMB definitions are determined by HUD to be larger than their housing market areas.

The following counties are assigned their own FMRs and VLILs and evaluated as if they were separate metropolitan areas for purposes of designating Difficult Development Areas.

Metropolitan Area and Counties Deleted

Chicago, IL: DeKalb, Grundy, and Kendall Counties.

Cincinnati-Hamilton, OH–KY–IN: Brown County, Ohio; Gallatin, Grant, and Pendleton Counties, Kentucky; and Ohio County, Indiana.

Dallas, TX: Henderson County.

Flagstaff, AZ–UT: Kane County, Utah.

New Orleans, LA: St. James Parish.

Washington, DC–MD–VA–WV: Clarke, Culpeper, King George, and Warren Counties, Virginia; and Berkely and Jefferson Counties, West Virginia.

Affected MSAs/PMSAs are assigned the indicator ''(part)'' in the list of Metropolitan Difficult Development Areas. Any of the excluded counties designated as difficult development areas separately from their metropolitan areas are designated by the county name.

Finally, in the New England states (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont) OMB defines MSAs/PMSAs according to county subdivisions or Minor Civil Divisions (''MCDs'') rather than county boundaries. Thus, when a New England county is designated as a Nonmetropolitan Difficult Development Area, only that part of the county (the group of MCDs) not included in any MSA/PMSA is the Nonmetropolitan Difficult Development Area. Affected counties are assigned the indicator ''(part)'' in the list of Nonmetropolitan Difficult Development Areas.

For the convenience of readers of this notice, the geographic definitions of designated Metropolitan Difficult Development Areas and the MCDs included in Nonmetropolitan Difficult Development Areas in the New England states are included in the list of Difficult Development Areas.

Future Designations

Difficult Development Areas are designated annually as updated income and FMR data become available. Qualified Census Tracts will not be redesignated until data from the 2000 census become available unless changes in MSA/PMSA definitions are made by OMB in the interim.

Effective Date

The list of Difficult Development Areas and the supplemental list of Qualified Census Tracts is effective for allocations of credit made after December 31, 1998. In the case of a building described in Internal Revenue Code section 42(h)(4)(B), the list is effective if the bonds are issued and the building is placed in service after December 31, 1998. The corrected designations of Qualified Census Tracts published May 1, 1995, at 60 FR 21246, as amended by the supplemental designation of Qualified Census tracts published June 25, 1998, at 63 FR 34748, are not affected by this Notice.

Interpretive Examples for Effective Date

For the convenience of readers of this Notice, interpretive examples are provided below to illustrate the consequences of the effective date in areas that gain or lose Difficult Development Area status with respect to projects described in Internal Revenue Code section 42(h)(4)(B). The examples are equally applicable to Qualified Census Tract designations.

(Case A) Project ''A'' is located in a newly-designated 1999 Difficult Development Area. Bonds are issued for Project ''A'' on November 1, 1998, but Project ''A'' is placed in service March

1, 1999. Project ''A'' IS NOT eligible for the increase in basis otherwise accorded a project in this location because the bonds were issued BEFORE December 31, 1999.

(Case B) Project ''B'' is located in a newly-designated 1999 Difficult Development Area. Project ''B'' is placed in service November 15, 1998. The bonds which will support the permanent financing of Project ''B'' are issued January 15, 1999. Project ''B'' IS NOT eligible for the increase in basis otherwise accorded a project in this location because the project was placed in service BEFORE December 31, 1998.

(Case C) Project ''C'' is located in an area which is a Difficult Development Area in 1998, but IS NOT a Difficult Development Area in 1999. Bonds are issued for Project ''C'' on October 30, 1998, but Project ''C'' is not placed in service until March 30, 1999. Project ''C'' is eligible for the increase in basis available to projects located in 1998 Difficult Development Areas because both events (bonds issued and project placed in service) have occurred AFTER December 31, 1997.

Other Matters

Environmental Impact

In accordance with 40 CFR 1508.4 of the CEQ regulations and 24 CFR 50.19(c)(6) of the HUD regulations, the policies and procedures contained in this notice provide for the establishment of fiscal requirements or procedures which do not constitute a development decision that affects the physical condition of specific project areas or building sites and therefore, are categorically excluded from the requirements of the National Environmental Policy Act, except for extraordinary circumstances, and no FONSI is required.

Regulatory Flexibility Act

In accordance with 5 U.S.C. section 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this notice does not have a significant economic impact on a substantial number of small entities. The notice involves the designation of ''Difficult Development Areas'' and ''Qualified Census Tracts'' as required by section 42 of the Code, as amended, for use by political subdivisions of the States in allocating the LIHTC. This notice places no new requirements on the States, their political subdivisions, or the applicants for the credit. This notice also details the technical methodology used in making such designations.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this notice will not have any substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the order. The notice merely designates ''Difficult Development Areas'' as required under section 42 of the Internal Revenue Code, as amended, for the use by political subdivisions of the States in allocating the LIHTC. The notice also details the technical methodology used in making such designations.

Dated: October 29, 1998.

Andrew M. Cuomo,

Secretary.

BILLING CODE 4210–32–P

1999 IRC Section 42(d)(5)(C) Nonmetropolitan Difficult Development Areas

STATE	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT
AK	BETHEL CENSUS AREA	DILLINGHAM CENSUS AREA	FAIRBANKS NORTH STAR BOROUGH	HAINES BOROUGH
	JUNEAU BOROUGH	KETCHIKAN GATEWAY BOROUGH	KODIAK ISLAND BOROUGH	LAKE AND PENINSULA BOROUGH
	NOME CENSUS AREA	NORTH SLOPE BOROUGH	NORTHWEST ARCTIC BOROUGH	PRINCE OF WALES-OUTER KETCHIKAN CENSUS AREA
	SITKA BOROUGH	WADE HAMPTON CENSUS AREA	WRANGELL-PETERSBURG CENSUS AREA	YUKON-KOYUKUK CENSUS AREA
AR	BAXTER COUNTY	DREW COUNTY		
AZ	APACHE COUNTY	COCHISE COUNTY	GILA COUNTY	GRAHAM COUNTY
	LA PAZ COUNTY	NAVAJO COUNTY	SANTA CRUZ COUNTY	YAVAPAI COUNTY
CA	ALPINE COUNTY	AMADOR COUNTY	CALAVERAS COUNTY	COLUSA COUNTY
	DEL NORTE COUNTY	GLENN COUNTY	HUMBOLDT COUNTY	IMPERIAL COUNTY
	INYO COUNTY	KINGS COUNTY	LAKE COUNTY	MARIPOSA COUNTY
	MENDOCINO COUNTY	MODOC COUNTY	MONO COUNTY	NEVADA COUNTY
	PLUMAS COUNTY	SAN BENITO COUNTY	SIERRA COUNTY	SISKIYOU COUNTY
	TEHAMA COUNTY	TRINITY COUNTY	TUOLUMNE COUNTY	
CO	ARCHULETA COUNTY	GARFIELD COUNTY	LA PLATA COUNTY	PARK COUNTY
	PITKIN COUNTY	SAN MIGUEL COUNTY	SUMMIT COUNTY	
CT	LITCHFIELD COUNTY (part) Canaan town, Kent town, Norfolk town, Sharon town Colebrook town, Litchfield town, North Canaan town, Torrington town Cornwall town, Morris town, Salisbury town, Warren town Goshen town		MIDDLESEX COUNTY (part) Chester town, Essex town Deep River town, Westbrook town	NEW LONDON COUNTY (part) Lyme town, Volunton town
DE	SUSSEX COUNTY			
FL	BAKER COUNTY	CALHOUN COUNTY	CITRUS COUNTY	COLUMBIA COUNTY
	DESOTO COUNTY	DIXIE COUNTY	FRANKLIN COUNTY	GILCHRIST COUNTY
	GLADES COUNTY	GULF COUNTY	HAMILTON COUNTY	HARDEE COUNTY
	HENDRY COUNTY	HIGHLANDS COUNTY	HOLMES COU	INDIAN RIVER COUNTY
	JACKSON COUNTY	JEFFERSON COUNTY	LAFAYETTE COUNTY	LEVY COUNTY
	LIBERTY COUNTY	MADISON COUNTY	MONROE COUNTY	OKEECHOBEE COUNTY
	PUTNAM COUNTY	SUMTER COUNTY	SUWANNEE COUNTY	TAYLOR COUNTY
	UNION COUNTY	WAKULLA COUNTY	WALTON COUNTY	WASHINGTON COUNTY
GA	BUTTS COUNTY	DAWSON COUNTY		
HI	HAWAII COUNTY	KAUAI COUNTY	MAUI COUNTY	
ID	BONNER COUNTY	KOOTENAI COUNTY		
KY	HARLAN COUNTY	KNOX COUNTY	LAUREL COUNTY	
LA	NATCHITOCHES PARISH	ST. MARY PARISH	VERNON PARISH	WEST FELICIANA PARISH

1999 IRC Section 42(d)(5)(C) Nonmetropolitan Difficult Development Areas

STATE	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT
ME	ANDROSCOGGIN COUNTY (part) Durham town Leeds town Livermore town Livermore Falls town Minot town	AROOSTOOK COUNTY	CUMBERLAND COUNTY (part) Baldwin town Bridgton town Brunswick town Harpswell town Harrison town Naples town New Gloucester town Pownal town Sebago town	FRANKLIN COUNTY
	HANCOCK COUNTY	KNOX COUNTY	LINCOLN COUNTY	OXFORD COUNTY
	PISCATAQUIS COUNTY	SAGADAHOC COUNTY	SOMERSET COUNTY	WASHINGTON COUNTY
	PENOBSCOT COUNTY (part) Alton town Argyle unorg. Bradford town Bradley town Burlington town Carmel town Carroll plantation Charleston town Chester town Clifton town Corinna town Corinth town Dexter town Dixmont town Drew plantation East Central Penobscot unorg. East Millinocket town Edinburg town Enfield town Etna town Exeter town Garland town Greenbush town Greenfield town Howland town Hudson town Kingman unorg. Lagrange town Lakeville town Lee town Levant town Lincoln town Lowell town Mattawamkeag town Maxfield town Medway town Millinocket town Mount Chase town Newburgh town North Penobscot unorg. Newport town Passadumkeag town Patten town Plymouth town Prentiss plantation Seboeis plantation Springfield town Stacyville town Stetson town Twombly unorg. Webster plantation Whitney unorg. Winn town Woodville town		WALDO COUNTY (part) Belfast city Belmont town Brooks town Burnham town Frankfort town Freedom town Islesboro town Jackson town Knox town Liberty town Lincolnville town Monroe town Montville town Morrill town Northport town Palermo town Prospect town Searsmont town Searsport town Stockton Springs town Swanville town Thorndike town Troy town Unity town Waldo town	YORK COUNTY (part) Acton town Alfred town Arundel town Biddeford city Cornish town Dayton town Kennebunk town Kennebunkport town Lebanon town Limerick town Lyman town Newfield town North Berwick town Ogunquit town Parsonsfield town Saco city Sanford town Shapleigh town Waterboro town Wells town
MA	BARNSTABLE COUNTY (part) Bourne town Falmouth town Provincetown town Truro town Wellfleet town	DUKES COUNTY	FRANKLIN COUNTY (part) Ashfield town Bernardston town Buckland town Charlemont town Colrain town Conway town Deerfield town Erving town Gill town Greenfield town Hawley town Heath town Leverett town Leyden town Monroe town Montague town New Salem town Northfield town Orange town Rowe town Shelburne town Shutesbury town Warwick town Wendell town Whately town	
	HAMPDEN COUNTY (part) Blandford town Brimfield town Chester town Granville town Tolland town Wales town	HAMPSHIRE COUNTY (part) Chesterfield town Cummington town Goshen town Middlefield town Pelham town Plainfield town Westhampton town Worthington town	NANTUCKET COUNTY	WORCESTER COUNTY (part) Athol town Hardwick town Hubbardston town Petersham town New Braintree town Phillipston town Royalston town Warren town
MS	COAHOMA COUNTY	ISSAQUENA COUNTY	LAFAYETTE COUNTY	WASHINGTON COUNTY
MT	GALLATIN COUNTY			
NV	DOUGLAS COUNTY			
NH	BELKNAP COUNTY	CARROLL COUNTY	CHESHIRE COUNTY	GRAFTON COUNTY
	HILLSBOROUGH COUNTY (part) Antrim town Bennington town Deering town Francestown town Greenfield town Hancock town Hillsborough town Lyndeborough town New Boston town Peterborough town Sharon town Temple town Windsor town	MERRIMACK COUNTY (part) Andover town Boscawen town Bow town Bradford town Canterbury town Chichester town Concord city Danbury town Dunbarton town Epsom town Franklin city Henniker town Hill town Hopkinton town Loudon town Newbury town New London town Northfield town Pembroke town Pittsfield town Salisbury town Sutton town Warner town Webster town Wilmot town		ROCKINGHAM COUNTY (part) Deerfield town Northwood town Nottingham town
	STRAFFORD COUNTY (part) Middleton town New Durham town Strafford town	SULLIVAN COUNTY		

1999 IRC Section 42(d)(5)(C) Nonmetropolitan Difficult Development Areas

STATE	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT
NM	CATRON COUNTY	CHAVES COUNTY	CIBOLA COUNTY	DEBACA COUNTY
	GRANT COUNTY	GUADALUPE COUNTY	HARDING COUNTY	LINCOLN COUNTY
	LUNA COUNTY	MCKINLEY COUNTY	MORA COUNTY	QUAY COUNTY
	RIO ARRIBA COUNTY	SAN MIGUEL COUNTY	SIERRA COUNTY	TAOS COUNTY
	UNION COUNTY			
NY	ALLEGANY COUNTY	CATTARAUGUS COUNTY	CHENANGO COUNTY	CLINTON COUNTY
	COLUMBIA COUNTY	CORTLAND COUNTY	DELAWARE COUNTY	ESSEX COUNTY
	FRANKLIN COUNTY	FULTON COUNTY	GREENE COUNTY	HAMILTON COUNTY
	JEFFERSON COUNTY	LEWIS COUNTY	SCHUYLER COUNTY	ST. LAWRENCE COUNTY
	STEUBEN COUNTY	SULLIVAN COUNTY	TOMPKINS COUNTY	ULSTER COUNTY
	YATES COUNTY			
NC	CAMDEN COUNTY	DARE COUNTY	WATAUGA COUNTY	
OR	BAKER COUNTY	CLATSOP COUNTY	COOS COUNTY	CROOK COUNTY
	CURRY COUNTY	DESCHUTES COUNTY	DOUGLAS COUNTY	GRANT COUNTY
	HARNEY COUNTY	HOOD RIVER COUNTY	JEFFERSON COUNTY	JOSEPHINE COUNTY
	KLAMATH COUNTY	LAKE COUNTY	LINCOLN COUNTY	LINN COUNTY
	MALHEUR COUNTY	SHERMAN COUNTY	TILLAMOOK COUNTY	UMATILLA COUNTY
	UNION COUNTY	WALLOWA COUNTY	WASCO COUNTY	WHEELER COUNTY
PA	MONROE COUNTY	NORTHUMBERLAND COUNTY	UNION COUNTY	WAYNE COUNTY
PI	PACIFIC ISLANDS			
PR	All			
RI	NEWPORT COUNTY (part) Middleton town Portsmouth town Newport city	WASHINGTON COUNTY (part) New Shoreham town		
SD	BUTTE COUNTY	LAWRENCE COUNTY	MEADE COUNTY	
TX	ARANSAS COUNTY	CAMP COUNTY	HUDSPETH COUNTY	KIMBLE COUNTY
	LLANO COUNTY	REAGAN COUNTY	VAL VERDE COUNTY	WALKER COUNTY
UT	DAGGETT COUNTY	IRON COUNTY	WASHINGTON COUNTY	
VT	ADDISON COUNTY	BENNINGTON COUNTY	CHITTENDEN COUNTY (part) Bolton town Underhill town Buels gore Westford town Huntington town	LAMOILLE COUNTY
	ORANGE COUNTY	RUTLAND COUNTY	WASHINGTON COUNTY	WINDHAM COUNTY
	WINDSOR COUNTY			
VI	ST. CROIX	ST. JOHNS/ST. THOMAS		
VA	CAROLINE COUNTY	WESTMORELAND COUNTY		

1999 IRC Section 42(d)(5)(C) Nonmetropolitan Difficult Development Areas

STATE	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT
WA	ADAMS COUNTY	CHELAN COUNTY	CLALLAM COUNTY	COLUMBIA COUNTY
	FERRY COUNTY	GARFIELD COUNTY	GRANT COUNTY	GRAYS HARBOR COUNTY
	JEFFERSON COUNTY	KITTITAS COUNTY	KLICKITAT COUNTY	LEWIS COUNTY
	LINCOLN COUNTY	MASON COUNTY	OKANOGAN COUNTY	PACIFIC COUNTY
	PEND OREILLE COUNTY	SAN JUAN COUNTY	SKAGIT COUNTY	SKAMANIA COUNTY
	STEVENS COUNTY	WAHKIAKUM COUNTY		
WV	BARBOUR COUNTY	BOONE COUNTY	BRAXTON COUNTY	CALHOUN COUNTY
	CLAY COUNTY	DODDRIDGE COUNTY	FAYETTE COUNTY	GILMER COUNTY
	LINCOLN COUNTY	LOGAN COUNTY	MCDOWELL COUNTY	MINGO COUNTY
	MONROE COUNTY	NICHOLAS COUNTY	POCAHONTAS COUNTY	PRESTON COUNTY
	RANDOLPH COUNTY	ROANE COUNTY	SUMMERS COUNTY	TUCKER COUNTY
	UPSHUR COUNTY	WEBSTER COUNTY	WIRT COUNTY	WYOMING COUNTY

1999 Internal Revenue Code Section 42(d)(5)(C) Metropolitan Difficult Development Areas

STATE	METROPOLITAN AREA and Components	METROPOLITAN AREA and Components	METROPOLITAN AREA and Components	METROPOLITAN AREA and Components
AZ	Yuma, AZ Yuma County			
CA	Chico-Paradise, CA Butte County	Fresno, CA Fresno County Madera County	Los Angeles-Long Beach, CA Los Angeles County	Merced, CA Merced County
	Salinas, CA Monterey County	San Francisco, CA San Francisco County Marin County San Mateo County	San Luis Obispo-Atascadero-Paso Robles, CA San Luis Obispo County	Santa Barbara-Santa Maria-Lompoc, CA Santa Barbara County
	Santa Cruz-Watsonville, CA Santa Cruz County	Santa Rosa, CA Sonoma County		
FL	Daytona Beach, FL Flagler County Volusia County	Fort Pierce-Port Lucie, FL Martin County St. Lucie County	Miami, FL Dade County	Sarasota-Bradenton, FL Manatee County Sarasota County
	Orlando, FL Lake County Osceola County Orange County Seminole County	Punta Gorda, FL Charlotte County		
HI	Honolulu, HI Honolulu County			
MA	Barnstable-Yarmouth, MA Barnstable city Harwich town Brewster town Mashpee town Chatham town Orleans town Dennis town Sandwich town Eastham town Yarmouth town	Boston, MA-NH Berkley town Rowley town Dighton town Salem city Mansfield town Salisbury town Norton town Saugus town Taunton city Swampscott town Amesbury town Topsfield town Beverly city Wenham town Danvers town Acton town Essex town Arlington town Gloucester city Ashland town Hamilton town Ayer town Ipswich town Bedford town Lynn city Belmont town Lynnfield town Boxborough town Manchester-by-the-Sea Burlington town Marblehead town Cambridge city Middleton town Carlisle town Nahant town Concord town Newbury town Everett city Newburyport city Framingham town Peabody city Holliston town Rockport town Hopkinton town	Hudson town Watertown city Lexington town Wayland town Lincoln town Weston town Littleton town Wilmington town Malden city Winchester town Marlborough city Woburn city Maynard town Bellingham town Medford city Braintree town Melrose city Brookline town Natick town Canton town Newton city Cohasset town North Reading town Dedham town Reading town Dover town Sherborn town Foxborough town Shirley town Franklin city Somerville city Holbrook town Stoneham town Medfield town Stow town Medway town Sudbury town Millis town Townsend town Milton town Wakefield town Needham town Waltham city	Norfolk town Plymouth town Norwood town Rockland town Plainville town Scituate town Quincy city Wareham town Randolph town Boston city Sharon town Chelsea city Stoughton town Revere city Walpole town Winthrop town Wellesley town Berlin town Westwood town Blackstone town Weymouth town Bolton town Wrentham town Harvard town Carver town Hopedale town Duxbury town Lancaster town Hanover town Mendon town Hingham town Milford town Hull town Millville town Kingston town Southborough town Marshfield town Upton town Norwell town Seabrook town, NH Pembroke town South Hampton town, NH
NC	Wilmington, NC Brunswick County New Hanover County			
NJ	Atlantic-Cape May, NJ Atlantic County Cape May County	Jersey City, NJ Hudson County	Monmouth-Ocean, NJ Monmouth County Ocean County	Vineland-Millville-Bridgeton, NJ Cumberland County

1999 Internal Revenue Code Section 42(d)(5)(C) Metropolitan Difficult Development Areas

STATE	METROPOLITAN AREA and Components	METROPOLITAN AREA and Components	METROPOLITAN AREA and Components	METROPOLITAN AREA and Components
NY	Dutchess County, NY Duchess County	Nassau-Suffolk, NY Nassau County Suffolk County	New York, NY Bronx County Kings County New York County Putnam County Queens County Richmond County Rockland County Westchester County	Newburgh, NY-PA Orange County, NY Pike County, PA
OR	Eugene-Springfield, OR Lane County	Medford-Ashland, OR Jackson County		
PA	State College, PA Centre County			
PR	Aguadilla, PR Aguada Municipio Aguadilla Municipio Moca Municipio	Caguas, PR Caguas Municipio Cayey Municipio Cidra Municipio Gurabo Municipio San Lorenzo Mun.	Mayaguez, PR Anasco Municipio Cabo Rojo Mun. Hormigueros Mun. Mayaguez Municipio Sabana Grande Mu. San German Mun.	San Juan-Bayamon, PR Aguas Buenas Mu. Barceloneta Mun. Bayamon Mun. Canovanas Mun. Carolina Municipio San Juan Mun. Toa Alta Municipio Toa Baja Mun. Trujillo Alto Mun. Vega Alta Mun. Vega Baja Mun. Yabucoa Municipio Catano Municipio Ceiba Municipio Comerio Municipio Corozal Municipio Dorado Municipio Fajardo Municipio Florida Municipio Guaynabo Municipio Humacao Municipio Juncos Municipio Las Piedras Mun. Loiza Municipio Luquillo Municipio Manati Municipio Morovis Municipio Naguabo Municipio Naranjito Municipio
SC	Myrtle Beach, SC Horry County			
TX	Brownsville-Harlingen-San Benito, TX Cameron County	Corpus Christi, TX Nueces County San Patricio County	El Paso, TX El Paso County	Laredo, TX Webb County
WA	Bellingham, WA Whatcom County	Yakima, WA Yakima County		

IRS SECTION 42(D)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (1990 DATA, MSA/PMSA DEFINITIONS JUNE 23, 1998)

METROPOLITAN AREA: Missoula, MT												
COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Missoula County	2.01	3.00										

IRS SECTION 42(D)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (1990 DATA, MSA/PMSA DEFINITIONS JUNE 23, 1998)

STATE: MONTANA												
COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Big Horn County	9642.00											
Blaine County	9725.00											
Flathead County	10.00											
Gallatin County	9866.00											
Glacier County	9762.00											
Hill County	9737.00											
Lewis and Clark County	9789.00	9796.00										
Rosebud County	9627.00											
Silver Bow County	1.00											

VIRGIN ISLANDS												
COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
St. Croix Island	9703.00	9709.00	9711.00	9713.00	9714.00							

PACIFIC ISLANDS: AMERICAN SAMOA												
COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Eastern District	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00					
Manu'A District	9517.00	9518.00										
Swains Island	9520.00											
Western District	9510.00	9511.00	9513.00	9515.00								

PACIFIC ISLANDS: GUAM												
COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Guam	9512.00											

PACIFIC ISLANDS: NORTHERN MARIANA ISLANDS												
COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Northern Islands Municipality	9501.00											
Saipan Municipality	9514.00	9515.00										

IRS SECTION 42(D)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (1990 DATA, MSA/PMSA DEFINITIONS JUNE 23, 1998)

PACIFIC ISLANDS: PALAU

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Aimeliik State	9501.98											
Airai State	9701.98											
Angaur State	9501.00											
Hatobohei State	9501.00											
Kayangel State	9501.00											
Koror State	9501.00	9502.00	9503.00	9504.00	9505.00	9506.98						
Melekeok State	9601.98	9602.97										
Ngaraard State	9701.98											
Ngarchelong State	9501.98											
Ngardmau State	9601.98											
Ngatpang State	9601.98											
Ngchesar State	9501.98											
Ngeremlengui State	9701.98											
Ngiwal State	9501.98											
Peleliu State	9601.00	9602.98										
Sonsorol State	9501.00											

[FR Doc. 98–32561 Filed 12–8–98; 8:45 am]

BILLING CODE 4210–32–C

federal register

Wednesday
December 9, 1998

Part IV

Department of Housing and Urban Development

Privacy Act of 1974; Computer Matching Program; Notices

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4357–N–01]

Privacy Act of 1974; Notice of Matching Program: Matching Tenant Data in Assisted Housing Programs

AGENCY: Office of Administration, HUD.

ACTION: Notice of a computer matching program between the Department of Housing and Urban Development (HUD) and the Social Security Administration (SSA) and the Internal Revenue Service (IRS).

SUMMARY: Pursuant to the Computer Matching and Privacy Protection Act of 1988, as amended, and the Office of Management and Budget's Guidance on the statute, HUD is updating its notice of a matching program involving comparisons between income data provided by applicants or participants in HUD's assisted housing programs and independent sources of income information. The matching program will be carried out to detect excessive housing assistance under the National Housing Act, the United States Housing Act of 1937, section 101 of the Housing and Community Development Act of 1965 and the Native American Housing Assistance and Self-Determination Act of 1996. The program provides for the verification of the matching results and the initiation of appropriate administrative or legal actions, primarily through public housing agencies, Indian Tribes and Tribally Designated Housing Entities (these three types of entities subsequently are referenced as housing agencies [HAs]), and private owners/management agents for subsidized multifamily projects.

This notice provides an overview of computer matching for HUD's assisted housing programs. Specifically, this notice describes HUD's program for computer matching its tenant data to: (a) The Social Security Administration's (SSA) earned income and the Internal Revenue Service's (IRS) unearned income data, (b) SSA's wage and social security and supplemental security income data, (c) State Wage Information Collection Agencies' (SWICAs') wage and unemployment benefit claim information, and (d) the Office of Personnel Management's personnel data.

Changes to this notice recognize: (a) A recent statutory change providing permanent authority for SSA and IRS disclosures of Federal tax return information to HUD, (b) an additional HUD matching program objective, i.e., to develop nationwide estimates of excessive housing assistance to satisfy a financial reporting requirement, (c) the assignment of certain income verification functions to Federal employees in HUD's Chicago and Seattle Offices, and (d) HUD's current and planned use of a secure electronic facility for transmitting social security and supplemental security income data to entities that administer HUD's rental assistance programs.

EFFECTIVE DATES: HUD considers this as a continuous matching program. The computer matching described in this notice may begin after compliance with the reporting requirements cited in section 4 of Appendix I to OMB Circular No. A–130—Federal Agency Responsibilities for Maintaining Records About Individuals (Transmittal Memorandum No. 3; February 8, 1996). That section requires that Federal agencies provide the Chair of the House Committee on Government Reforms and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Office of Management and Budget with notice of the matching program and computer matching agreements 40 days before operating the program.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication 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 Privacy Act:* Jeanette Smith, Departmental Privacy Act Officer, Room 4178, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone number (202) 708–2374. A telecommunications device for hearing- and speech-impaired individuals (TTY) is available at 1–800–877–8339 (Federal Information Relay Service). *For further information from recipient agency:* David L. Decker, Director, Computer Matching Activities, Office of the Public and Indian Housing Comptroller, Room 5156, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone number (202) 708–0099, TTY—(202) 708–0850.

Director, Asset Recovery Center, Room 2207, Department of Housing and Urban Development, 77 West Jackson Boulevard, Chicago, Illinois 60604, telephone number (312) 353–6236, ext. 2007. Gordon L. Brandhagan, Director Asset Recovery Center, Suite 200, Department of Housing and Urban Development, 909 First Avenue, Seattle, Washington 98104, telephone number (206) 220–5313. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: This notice supersedes a similar notice published in the **Federal Register** on May 2, 1995 (60 FR 21548).

The Computer Matching and Privacy Protection Act of 1988, as amended (5 U.S.C. 552a) (the CMPP Act), the Office of Management and Budget's (OMB's) guidance on this statute entitled ''Final Guidance Interpreting the Provisions of Pub. L. 100–503, the Computer Matching and Privacy Protection Act of 1988'' (OMB Guidance), and OMB Circular No. A–130 require publication of notices of computer matching programs. Appendix I to OMB's Revision of Circular No. A–130, ''Transmittal 2, Management of Federal Information Resources,'' prescribes Federal agency responsibilities for maintaining records about individuals. In accordance with the CMPP Act and Appendix I to OMB Circular No. A–130, copies of this notice are being provided to the Committee on Government Reform and Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and OMB's Office of Information and Regulatory Affairs.

During Fiscal Year 1998 Federal employees located in HUD's Chicago Office have been assigned to: (1) Obtain copies from HAs, private owners/management agents' records as needed to verify the incomes of tenants who receive rental assistance, (2) compare those records with computer matching results, (3) estimate excessive housing assistance for the tenants, (4) send letters to tenants and notices to HAs, private owners/management agents, and (5) to follow up as necessary on the resolution of the income discrepancies.

I. Authority

This matching program is being conducted pursuant to sections 3003 and 13403 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66, approved August 10, 1993); section 542(b) of the 1998 Appropriations Act (Pub. L. 106–25); section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (42 U.S.C. 3544); section 165 of the Housing and Community Development Act of 1987 (42 U.S.C. 3543); the National Housing Act (12 U.S.C. 1701–1750g); the United States Housing Act of 1937

(42 U.S.C. 1437–1437o); section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s); and the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*).

The Omnibus Budget Reconciliation Act of 1993 (Budget Reconciliation Act) authorizes HUD to request from the SSA and the IRS Federal tax return data as prescribed in section 6103(l)(7) of title 26 of the United States Code (Internal Revenue Code). The Federal tax return data that HUD receives includes income data that individuals receive from employers and financial institutions (e.g., income data that would be shown on IRS Form W–2's and Form 1099's) for use in preparing tax returns. The Budget Reconciliation Act limits HUD's access to tax return data and prohibits HUD's redisclosure of tax return data to HAs, and private owners/management agents for subsidized multifamily projects. However, it allows HUD to disclose the fact that discrepancies exist between information provided by tenants and other sources, and to request that HAs, private owners and agents reverify tenant incomes when income comparisons indicate uncertain eligibility benefits or an excessive level of benefits.

Section 542(b) of HUD's 1998 Appropriation Act (Pub. L. 105–65; October 27, 1997) eliminated a September 30, 1998 sunset provision to 26 U.S.C. 610(l)(7)(D)(ix) of the Internal Revenue Code effectively making permanent the authority for SSA and IRS disclosures of Federal tax return information to HUD.

Section 3003 of the Budget Reconciliation Act requires that applicants and participants in assisted housing programs sign a consent form authorizing the Secretary of HUD to request that the Commissioner of Social Security and the Secretary of the Treasury release the Federal tax return data. The final rule regarding participants' consent to the release of information was published by HUD in the **Federal Register** on March 20, 1995 (61 FR 11112).

The Stewart B. McKinney Homeless Assistance Amendments Act of 1988 authorizes HUD and HAs (but not private owners/management agents for subsidized multifamily projects) to request wage and claim information from State Wage Information Collection Agencies (SWICAs) responsible for administering State unemployment laws in order to undertake computer matching. This Act authorizes HUD to require applicants and participants to sign a consent form authorizing HUD or the HA to request wage and claim information from the SWICAs.

The Housing and Community Development Act of 1987 authorizes HUD to require applicants and participants (as well as members of their households six years of age and older) in HUD-administered programs involving rental assistance to disclose to HUD their social security numbers (SSNs) as a condition of initial or continuing eligibility for participation in the programs.

II. Objectives To Be Met by the Matching Program

HUD's primary objective in implementing the computer matching program is to increase the availability of housing assistance to individuals who meet the requirements of the housing assistance programs. Other objectives include determining the appropriate level of housing assistance, identifying and recovering excessive housing assistance received by tenants, and deterring future abuses of assisted housing programs. Using Federal tax return data, HUD now conducts computer matching and income verification program annually for a random sample of households that received rental assistance. HUD also conducts computer matching involving selected housing agencies, owners and agents. HUD plans to start implementing larger-scale computer matching in Fiscal Year 1999.

Based on the computer matching and subsequent HUD analysis of tenant-provided information, HUD develops nationwide estimates of the extent of excess rental assistance attributable to unreported income. HUD uses the estimates for financial statement reporting purposes. In addition, HUD sends letters to tenants and notices to HAs and private owners/management agents so that these parties may resolve the income discrepancies and appropriate administrative or legal actions may be taken.

HUD's various assisted housing programs, available through HAs or subsidized multifamily project owners/management agents, require that applicants meet certain income and other criteria to be eligible for housing assistance. In addition, tenants are required to report the amounts and sources of their income on at least an annual basis. The matching program identifies tenants receiving excessive housing assistance resulting from unreported or underreported family income. When the excessive housing assistance is identified, some tenants move out of assisted housing units while others agree to repay excessive housing assistance. Both these actions increase funds or units available to serve other beneficiaries of HUD programs. When tenants continue to be eligible for housing assistance, but at a reduced level, the tenants will be required to increase their contributions toward rent.

III. Program Description

In this computer matching program, tenant-provided information included in HUD's automated files will be compared to data from the SSA and the IRS, as well as from SWICAs and the Office of Personnel Management (OPM). HUD intends the SSA and IRS matching to be a continuing program for assisted housing programs nationwide. HUD will normally request that the SSA conduct matching of earned income information, and that the IRS conduct matching of unearned income information, several times annually. HUD will request SSA matching of social security and supplemental security income information monthly. In the future, HUD may request this data more frequently for some rental assistance programs.

HUD anticipates that it will conduct SWICA matching in selected States. Furthermore, HUD anticipates that SWICA and OPM matching will be used only occasionally to supplement SSA and IRS matching and income verification. HAs may also request SWICA matching.

HUD will disclose to the SSA, IRS, and SWICAs only tenant personal identifiers, i.e., SSNs, surnames, dates of birth, and sexes. The SSA, IRS, and SWICAs will conduct the matching of the HUD-provided personal identifiers to personal identifiers included in their automated files. Those agencies will provide income data to HUD only for individuals with matching personal identifiers.

The process of income matching between HUD and the OPM varies from the above. The OPM will disclose its data to HUD, and HUD will conduct the computer matching to OPM data.

HUD will then compare the SSA, IRS, OPM, and SWICA income data to tenant-reported income data included in HUD's system of records known as the Tenant Housing Assistance and Contract Verification Data (HUD H–11), published at 62 FR 11909; March 13, 1997. This comparison will identify, based on criteria established by HUD, tenants whose incomes require further verification.

A. Income Verification

HUD will normally request that HAs or private owners/management agents

verify matching results as described below. However, under certain limited circumstances, HUD may verify tenant incomes with independent income sources. For example, such circumstances may include: (a) When HUD declares an HA in breach of an annual contributions contract; or (b) when tenants fail to disclose SSA and IRS data, or the tenants commit other serious violations, and HUD's analysis of the data could support legal actions. HUD may send letters to employers to request income data, but HUD will not disclose tax return data to HAs, private owners/management agents, employers, or payers.

(1) *Verification of SSA and IRS Data Referenced in Section 6103(l)(7) of the Internal Revenue Code*

Since HUD cannot redisclose tax return data directly to HAs or private owners/management agents, HUD plans to notify tenants of discrepancies between the tenant-reported income and the SSA and IRS data. HUD will supply the tenants with their income information taken directly from SSA and IRS data and request that the tenants provide this information to the HA or private owner/management agent. Concurrently, HUD will notify the HA or the private owner/management agent that a discrepancy exists between information provided by the tenants and other sources and will request reverification of the tenants' incomes. The notifications to the HAs and private owners/management agents will not include any tax return information.

Income information that tenants disclose to the HA or private owners/management agents will be verified directly with the income source or with other tenant-provided information. Tenants who fail to report to the HA or private owner/management agent after HUD's initial notice will receive a second notice sent by the HA or private owner/management agent. If the tenants still fail to provide the information to the HA or private owner/management agent, the HA or private owner/management agent may then terminate housing assistance, after providing the tenants an opportunity to challenge any adverse action.

The SSA and the IRS have advised HUD that the process described in the preceding paragraph is consistent with the intent of section 6103(l)(7) of the Internal Revenue Code, as the intent of the matching is to create a dialogue between the benefit recipient and the benefit provider.

(2) *Verification of Social Security and Supplemental Security Income Data*

Unlike the income information supplied by the SSA and the IRS for tax purposes, SSA's social security and supplemental security income data may be disclosed to HAs and private owners/management agents. Therefore, after receiving this data from the SSA and comparing it to tenant-reported income, HUD will disclose the SSA social security and supplemental security income data to HAs and private owners/management agents. These disclosures will include information on monthly social security and supplemental security income data and, where applicable, income discrepancy information between previous tenant-reported data and the income amounts provided by the SSA. HAs and private owners/management agents will use this information in periodic verifications of tenant incomes that are required to determine program eligibility and rental assistance amounts.

HUD has implemented a secure electronic facility for transmitting social security and supplemental security income data to all HAs. HUD plans to expand this facility to provide the same type of data to private owners/management agents, who previously received the information from the SSA.

(3) *Verification of SWICA Data*

HUD will disclose matching results for SWICA wage and unemployment claim data directly to HAs, but not to private owners/management agents. The comparison of SWICA wage information and the tenant-reported data will reveal whether income verification is necessary. HAs must then obtain wage information directly from the tenants' employers, including information from prior years, when appropriate. The SWICA unemployment claim data must be verified with the tenants. Verification with the SWICA would only be required if tenants dispute the SWICA claim data.

(4) *Verification of OPM Data*

HUD will disclose matching results for OPM data to HAs and private owners/management agents. The OPM data, when compared to the tenant-reported data, provides an indicator that income verification is necessary. The HAs and private owners/management agents may then obtain wage information directly from employers, including information from prior years when appropriate.

B. Administrative or Legal Actions

Regarding all the matching described in this notice, HUD anticipates that HAs and private owners/management agents will take appropriate actions in consultation with tenants to: (1) Resolve prior income disparities between tenant-reported and independent income source data, and (2) use correct income amounts in determining rental assistance.

After verifying that the tenants had access to income that the tenants did not report, the HAs or private owners/management agents will:

(1) Notify the tenants in writing of any findings;

(2) Calculate the unreported income and excessive housing assistance received by the family;

(3) Offer the tenants an opportunity to contest any findings;

(4) Provide a grievance hearing or a right to contest to the tenants, if requested; and

(5) Initiate, as appropriate, administrative or legal actions to resolve the tenants' underpayments of rent, using guidelines in HUD regulations and handbooks.

The HAs and private owners/management agents may not suspend, terminate, reduce, or make a final denial of any housing assistance to any individual as the result of information produced by this matching program until: (a) The individual has received notice from the HA or private owner/management agent of its findings and informing the individual of the opportunity to contest such findings and (b) either the notice period provided in applicable regulations of the program, or 30 days, whichever is later, has expired. In most cases, HAs and private owners/management agents will resolve income discrepancies in consultation with tenants.

In legal actions, HAs and private owners/management agents may refer cases to local law enforcement entities or HUD's Office of Inspector General (OIG) for possible investigation and prosecution, either criminal or civil. Referrals to the OIG should involve only egregious cases.

C. Public Reporting Burden on Computer Matching/Income Verification Results

The information collection requirements contained in §§ 5.609 and 5.617 have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

HUD plans to use automated approaches for monitoring use of social security and supplemental security income data. Further, HUD plans to request feedback from HAs, and private owners/management agents concerning

the use of Federal tax return data that tenants disclose to entities that administer HUD's rental assistance programs. In developing the methodology, HUD will avoid imposing any unnecessary burden on HAs and private owners/management agents.

IV. Records To Be Matched

SSA and IRS will conduct the matching of tenant SSNs and additional identifiers (such as surnames and dates of birth) to tenant data that HUD supplies from its system of records known as the Tenant Housing Assistance and Contract Verification Data (HUD H–11). Within HUD, this system of records includes two automated systems known as the Multifamily Tenant Characteristics System (a system for programs under the Office of the Assistant Secretary for Public and Indian Housing) and the Tenant Rental Assistance Certification System (a system for programs under the Office of the Assistant Secretary for Housing—Federal Housing Commissioner). HAs and private owners/management agents for subsidized multifamily projects provide HUD with the tenant data that is included in HUD H–11.

The SSA will match the HUD H–11 records to the SSA's Earnings Recording and Self-Employment Income System (HHS/SSA/OSR, 09–60–0059) (Earnings Record); Master Beneficiary Record (HHS/SSA/OSR, 09–60–0090) (MBR); and Supplemental Security Income Record (HHS/SSA/OSR, 09–60–0103) (SSR). The IRS will match the HUD H–11 records to its Wage and Information Returns (IRP) Master File (Treas/IRS 22.061). The IRS also refers to this file as the Information Return Master File (IRMF).

HUD will place matching data into its Tenant Eligibility Verification Files (HUD/PIH–1), described at 60 FR 21545 (May 2, 1995.) The HUD/PIH–1 files are specifically exempt from certain provisions of the Privacy Act, as described in a notice published on February 28, 1994 (59 FR 9406) and a notice published on March 30, 1994 (59 FR 14869).

HUD may also coordinate SWICA income computer matches for its rental assistance programs using tenants' SSNs and surnames. SWICAs will match tenant records to machine-readable files of quarterly wage data and unemployment insurance benefit data. Results from this matching will be provided to HUD or HAs, which will then determine whether tenants have unreported or underreported income. The matching will be done in accordance with a written agreement between the SWICA and HUD.

In addition, tenants' SSNs may be matched to the OPM's General Personnel Records (OPM/GOVT–1), the Civil Service Retirement and Insurance Records System (OPM/Central-1), and the Department of Defense's Defense Manpower Data Center Data Base (S322.10.DMDC). Tenant data may be matched to the SSA's Master Files of Social Security Number Holders (HHS/SSA/OSR, 09–60–0058) and Death Master Files for the purpose of validating SSNs contained in tenant records. These records will also be used to validate SSNs for all applicants, tenants, and household members who are six (6) years of age and over to identify noncompliance with program eligibility requirements. HUD will compare tenant SSNs provided by HAs or private owners/management agents to reveal duplicate SSNs and potential duplicate housing assistance.

V. Period of the Match

The computer matching program will be conducted according to agreements between HUD and the SSA, IRS, OPM, and SWICAs. The computer matching agreements for the planned matches will terminate either when the purpose of the computer matching program is accomplished, or 18 months from the date the agreement is signed, whichever comes first.

The agreements may be extended for one 12-month period, with the mutual agreement of all involved parties, if the following conditions are met:

(1) Within 3 months of the expiration date, all Data Integrity Boards review the agreement, find that the program will be conducted without change, and find a continued favorable examination of benefit/cost results; and

(2) All parties certify that the program has been conducted in compliance with the agreement.

The agreement may be terminated, prior to accomplishment of the computer matching purpose or 18 months from the date the agreement is signed (whichever comes first), by the mutual agreement of all involved parties within 30 days of written notice.

Dated: November 25, 1998.

Joseph F. Smith,

Acting Assistant Secretary for Administration.

[FR Doc. 98–32560 Filed 12–8–98; 8:45 am]

BILLING CODE 4210–01–P

federal register

Wednesday
December 9, 1998

Part V

General Services Administration

41 CFR Parts 101–42 and 101–43

Donation of Certain Federal Surplus Firearms to State or Local Law Enforcement Activities; Proposed Rule

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–42 and 101–43

[FPMR Amendment H–]

RIN 3090–AG80

Donation of Certain Federal Surplus Firearms to State or Local Law Enforcement Activities

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) is proposing to amend the Federal Property Management Regulations (FPMR) to remove the prohibition on donation of surplus Federal firearms to allow donations to State and local law enforcement activities. This change, the result of interagency meetings with Federal law enforcement agencies in conjunction with the Department of Justice, will enable certain usable firearms acquired for Federal law enforcement purposes to continue serving a law enforcement role. This proposed rule establishes a centralized activity within GSA to coordinate all firearms transfers under the FPMR and specifies that donated firearms are restricted in perpetuity and may not be transferred except in accordance with this rule.

DATES: Comments must be submitted by January 8, 1999 to be considered in the formulation of a final rule.

ADDRESSES: Written comments should be sent to: Ms. Sharon Kiser, Regulatory Secretariat (MVR), Office of Governmentwide Policy, General Services Administration 1800 F Street, NW., Washington, DC 20405.

E-mail comments may be sent to RIN.3090–AG80@gsa.gov.

FOR FURTHER INFORMATION CONTACT: Ms. Martha Caswell, Director, Personal Property Management Policy Division (MTP), telephone (202) 501–3846.

SUPPLEMENTARY INFORMATION:

A. Executive Order 12866

GSA has determined that this proposed rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

B. Regulatory Flexibility Act

The 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.*

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the regulation does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 501, *et seq.*

D. Small Business Reform Act

This rule is exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Parts 101–42 and 101–43

Government property management, Hazardous materials, Reporting and recordkeeping requirements, Surplus Government property.

For the reasons set forth in the preamble, 41 CFR Parts 101–42 and 101–43 are proposed to be amended as follows:

1. The authority citation for Parts 101–42 and 101–43 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c).

PART 101–42—UTILIZATION AND DISPOSAL OF HAZARDOUS MATERIALS AND CERTAIN CATEGORIES OF PROPERTY

2. Section 101–42.1102–10 is amended by revising paragraphs (a) and (b) to read as follows:

§ 101–42.1102–10 Firearms.

(a) *Utilization requirements.* (1) Reports of excess firearms and requests for their transfer must be submitted to the: General Services Administration (7FP–8), Denver, CO 80225–0506.

(2) Firearms may be transferred only to those Federal agencies authorized to acquire firearms for official use. Such transfers must be executed under § 101–43.309–5 and, when applicable, § 101–42.1102–8(b). Additional written justification from the requesting agency may be required.

(b) *Donation requirements.* (1) Only hand guns, rifles, shotguns, individual light automatic weapons, and rifle and shoulder fired grenade launchers in ''used—poor'' or better condition, as defined in § 101–43.4801(e), may be offered by GSA (7FP–8) to State agencies for donation to State and local public agencies for law enforcement purposes only. Donations are limited to only those law enforcement activities whose primary function is the enforcement of applicable Federal, State, and/or local laws, and whose compensated law enforcement officers have powers to apprehend and arrest.

(2) Each SF 123 submitted to GSA must be accompanied by a conditional transfer document, signed by both the intended donee and the State agency, and containing the special terms, conditions, and restrictions prescribed by GSA.

(3) The restrictions on donated firearms shall be in perpetuity, and they may not be released by the State agency without prior written approval from GSA. All firearms must be destroyed by either the donee or the State agency when they are no longer needed. Destruction must be such that the firearms are rendered completely inoperable and incapable of being made operable for any purpose except for the recovery of basic material content in accordance with paragraph (c) of this section. The donee or the State agency, as applicable, must state in writing that the firearms were so destroyed.

(4) Surplus firearms approved for donation must be shipped or transported directly from the holding Federal agency to the donee and may not be stored in the State agency warehouse; or, arrangements may be made by the State agency for the designated donee to make a direct pickup at the holding agency.

(5) Firearm ammunition may not be donated.

* * * * *

PART 101–43—UTILIZATION OF PERSONAL PROPERTY

3. Section 101–43.304–2 is amended by revising paragraph (b) to read as follows:

§ 101–43.304–2 Form and distribution of reports.

* * * * *

(b) The SF 120 and SF 120A must be submitted in an original and three copies. Electronic reporting must be as specified and approved by GSA. Reports must be directed to the GSA regional office for the region in which the property is located (see § 101–43.4802). However, reports of fixed-wing and rotary-wing aircraft must be submitted to the General Services Administration (9FB), San Francisco, CA 94015, and reports of excess firearms must be submitted to the General Services Administration (7FP–8), Denver, CO 80225–0506.

4. Section 101–43.305 is amended by revising paragraph (b)(2) to read as follows:

§ 101–43.305 Property not required to be formally reported.

* * * * *

(b) * * *

(2) Property dangerous to public health and safety, except firearms;

* * * * *

5. Section 101–43.4801 is revised to read as follows:

§ 101–43.4801 Excess personal property reporting requirements.

(a) The table shown in paragraph (d) of this section shows the excess personal property Federal supply groups (FSG) and classes (FSC) comprising reportable property. Property in these groups and classes must be reported to GSA when the following disposal condition code and dollar threshold criteria are met:

(1) With the exception of aircraft and firearms, the disposal condition code as defined in paragraph (e) of this section is ''salvage'' or better. In accordance with § 101–43.304–2, fixed-wing and rotary-wing aircraft, airframe structural components, and aircraft engines, as specified in paragraph (b) of this section, are reportable regardless of condition; and firearms, as specified in paragraph (c) of this section, in ''repairs required— poor'' or better condition, are reportable.

(2) The unit cost, measured in acquisition dollars, is $5,000 or more.

(b) With respect to aircraft and aircraft components and accessories:

(1) As indicated in the table in paragraph (d) of this section, line items in Federal supply classes 1510, 1520, 1560, 2810, 2840, or any class in FSG 16 must be reported. In agencies other than the Department of Defense (DOD), all line items in these classes must be reported regardless of condition code when dollar criteria are met. For the DOD, aircraft in FSC 1510 which are in the Cargo/Transport, Observation, Anti-sub, Trainer, or Utility series, all aircraft in FSC 1520, and line items in other classes which are components of these aircraft must be reported regardless of condition code when dollar criteria are met.

(2) Items in Federal supply classes 1510 and 1520 held by DOD or other agencies must be reported to the: General Services Administration (9FB), San Francisco, California 94102.

(c) Executive agencies must report the following firearms in ''used—poor'' or better condition, as defined in § 101–43.4801(e), regardless of unit cost, to the: General Services Administration (7FP–8), Denver, CO 80225–0506.

(1) Handguns, rifles, shotguns, and individual light automatic weapons less than 50 caliber in FSC 1005, and

(2) Rifle and shoulder fired grenade launchers in FSC 1010.

(d) The following table shows Federal supply groups and classes which comprise reportable property:

FSG	FSC	Noun name
10	1005	Guns, through 30mm.
	1010	Guns, over 30 mm up to 75 mm.
15	1510	Aircraft, fixed wing.
	1520	Aircraft, rotary wing.
	1560	Airframe structural components.
16	All	Aircraft component and accessories.
18	All	Space vehicles.
19	All	Ships, small craft, pontoons, and floating docks (All but vessels 1500 gross tons and over).
22	All	Railway equipment.
23	All	Ground effect vehicles, motor vehicles, trailers, and cycles.
24	All	Tractors.
28	2805	Gasoline reciprocating engines, except aircraft; & components.
	2810	Gasoline reciprocating engines, aircraft prime mover; and components.
	2815	Diesel engines and components.
	2840	Gas turbines and jet engines, aircraft, prime moving; and components.
32	All	Woodworking machinery and equipment.
34	All	Metalworking machinery
35	All	Service and trade equipment.
36	All	Special industry machinery (All but 3690 Specialized ammunition and ordnance machinery and related equipment).
37	All	Agricultural machinery and equipment.
38	All	Construction, mining, excavating, and highway maintenance equipment.
39	All	Materials handling equipment.
42	All	Fire fighting, rescue, and safety equipment; and environmental protection equipment and materials.
43	All	Pumps and compressors.
49	4910	Motor vehicle maintenance and repair shop specialized equipment.
	4920	Aircraft maintenance and repair shop specialized equipment.
	4930	Lubrication and fuel dispensing equipment.
	4935	Guided missile maintenance, repair, and checkout specialized equipment.
	4940	Miscellaneous maintenance and repair shop specialized equipment.
	4960	Space vehicle maintenance, repair, and checkout specialized equipment.
54	All	Prefabricated structures and scaffolding.
61	All	Electric wire, and power and distribution equipment.
70	All	Automatic Data Processing Equipment (including firmware), software, supplies, and support equipment.
71	All	Furniture.
73	All	Food preparation and serving equipment.

(e) The appropriate disposal condition code from the table below must be assigned to each item record, report, or listing of excess personal property:

Disposal condition code	Brief definition	Expanded definition
1	Unused—good	Unused property that is usable without repairs and identical or interchangeable with new items from normal supply sources.
2	Unused—fair	Unused property that is usable without repairs, but is deteriorated or damaged to the extent that utility is somewhat impaired.
3	Unused—poor	Unused property that is usable without repairs, but is considerably deteriorated or damaged. Enough utility remains to classify the property better than salvage.
4	Used—good	Used property that is usable without repairs and most of its useful life remains.
5	Used—fair	Used property that is usable without repairs, but is somewhat worn or deteriorated and may soon require repairs.
6	Used—poor	Used property that may be used without repairs, but is considerably worn or deteriorated to the degree that remaining utility is limited or major repairs will soon be required.
7	Repairs required—good	Required repairs are minor and should not exceed 15 percent of original acquisition cost.
8	Repairs required—fair	Required repairs are considerable and are estimated to range from 16 percent to 40 percent of original acquisition cost.
9	Repairs required—poor	Required repairs are major because property is badly damaged, worn, or deteriorated, and are estimated to range from 41 percent to 65 percent of original acquisition cost.
X	Salvage	Property has some value in excess of its basic material content, but repair or rehabilitation to use for the originally intended purpose is clearly impractical. Repair for any use would exceed 65 percent of the original acquisition cost.
S	Scrap	Material that has no value except for its basic material content.

Dated: December 3, 1998.

Donald J. Suda,

Acting Associate Administrator, Office of Governmentwide Policy.

[FR Doc. 98–32588 Filed 12–8–98; 8:45 am]

BILLING CODE 6820–24–P

federal register

Wednesday
December 9, 1998

Part VI

Department of Defense

Department of the Army, Corps of Engineers

33 CFR Part 334

Naval Restricted Area: Naval Station Annapolis, Maryland; Final Rule

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Naval Restricted Area, Naval Station Annapolis, Maryland

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers is establishing a new restricted area in the waters of the small boat basin off the Severn River, in Annapolis, Maryland to prohibit public entry into the area. The restricted area is needed for the security of U.S. Navy facilities and watercraft and navigational safety for U.S. Naval Academy training vessels in that area. The water area in the small boat basin has always been closed to the public, however, as a result of the closure of the adjacent Naval Surface Warfare Center and the planned future public ownership of that facility, the water area may become accessible by the public.

EFFECTIVE DATE: January 8, 1999.

ADDRESSES: HQUSACE, CECW–OR, Washington, D.C. 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Torbett, Headquarters Regulatory Branch, at (202) 761–1787, or Mr. Steve Elinsky, Corps Baltimore District, at (410) 962–4503.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is amending the regulations in 33 CFR Part 334 by adding a new § 334.155 which establishes a naval restricted area at the Naval Station Annapolis small boat basin, off the Severn River at Annapolis, Maryland. The Commanding Officer of the Naval Station Annapolis, has requested that the Corps establish the restricted area for reasons of security and navigational safety. The small boat basin plays an integral role in the training of midshipmen of the U.S. Naval Academy. The basin is used continuously by the Naval Academy as a training area for maneuvering and seamanship exercises. Over the past 40 years, the small boat basin has been surrounded by restricted U.S. Navy property of the Naval Station Annapolis and the Naval Surface Warfare Center (NSWC), and accordingly, access to the basin was limited to Naval personnel. In 1995, the Congress approved the Department of Defense Base Realignment and Closure Commission's recommendation to close the NSWC at that location. The NSWC property is slated to become the property of Anne Arundel County and presumably that area and the shoreline of the basin could become accessible to the public. Public access to the basin from the NSWC property by non-U.S. Navy/Department of Defense personnel would pose an unacceptable security risk to the Naval Station. Navigational safety would also be a problem if non-Naval vessels are allowed to operate in the basin and because 260 feet of the NSWC seawall is located at the entrance to the basin, which is only 170 feet wide, any mooring by vessels along the seawall would further restrict the entrance and present a hazard to boats entering and leaving the basin.

Procedural Requirements

A. Review Under Executive Order 12866

This rule is issued with respect to a military function of the Defense Department and the provisions of EXECUTIVE ORDER 12866 do not apply.

B. Review Under the Regulatory Flexibility Act

These rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small Governments). The Corps expects that the economic impact of the establishment of this restricted area would have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this proposal if adopted, will have no significant economic impact on small entities.

C. Review Under the National Environmental Policy Act

An environmental assessment has been prepared for this action. We have concluded, based on the minor nature of the proposed additional restricted area regulations, that this action will not have a significant impact to the human environment, and preparation of an environmental impact statement is not required. The environmental assessment may be reviewed at the District Office listed at the end of **FOR FURTHER INFORMATION CONTACT,** above.

D. Unfunded Mandates Act

This rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small Governments will not be significantly and uniquely affected by this rulemaking.

E. Submission to Congress and the GAO

Pursuant to Section 801(a)(1)(A) of the Administrative Procedure Act as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, the Army has submitted a report containing this rule to the U.S. Senate, House of Representatives, and the Comptroller General of the General Accounting Office. This rule is not a major rule within the meaning of Section 804(2) of the Administrative Procedure Act, as amended.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, Danger zones.

For the reasons set out in the preamble, the Corps amends 33 CFR Part 334, as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Add new § 334.155, to read as follows:

§ 334.155 Severn River, Naval Station Annapolis, Small Boat Basin, Annapolis, MD; naval restricted area.

(a) *The area.* The waters within the Naval Station Annapolis small boat basin and adjacent waters of the Severn River enclosed by a line beginning at the southeast corner of the U.S. Navy Marine Engineering Laboratory; thence to latitude 38°58′56.5″, longitude 76°28′11.5″; thence to latitude 38°58′50.5″, longitude 76°27′52″; thence to the southeast corner of the Naval Station's seawall.

(b) *The regulations.* No person, vessel or other craft shall enter or remain in the restricted area at any time except as authorized by the enforcing agency.

(c) *Enforcement.* The regulations in this section shall be enforced by the Superintendent, U.S. Naval Academy, in Annapolis, Maryland, and such agencies as he/she may designate.

Dated: October 13, 1998.

Approved:

Eric R. Potts,

Colonel, Corps of Engineers Executive Director of Civil Works.

[FR Doc. 98–32720 Filed 12–8–98; 8:45 am]

BILLING CODE 3710–92–P

federal register

Wednesday
December 9, 1998

Part VII

The President

Presidential Determination No. 99–5 of November 25, 1998—Waiver and Certification of Statutory Provisions Regarding the Palestine Liberation Organization

Federal Register
Vol. 63, No. 236
Wednesday, December 9, 1998

Presidential Documents

Title 3—

The President

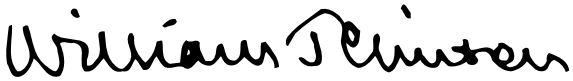
Presidential Determination 98–5 of November 25, 1998

Waiver and Certification of Statutory Provisions Regarding the Palestine Liberation Organization

Memorandum for the Secretary of State

Pursuant to the authority vested in me under section 540(d) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999, Public Law 105–277, I hereby determine and certify that it is important to the national security interests of the United States to waive the provisions of section 1003 of the Anti-Terrorism Act of 1987, Public Law 100–204, through May 24, 1999.

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



THE WHITE HOUSE,
Washington, November 25, 1998.

[FR Doc. 98–32941
Filed 12–8–98; 8:48 am]
Billing code 4710–10–M

federal register

Wednesday
December 9, 1998

Part VIII

The President

Proclamation 7157—Death of Albert Gore, Sr.

Executive Order 13106—Adjustments of Certain Rates of Pay and Delegation of a Federal Pay Administration Authority

Federal Register
Vol. 63, No. 236
Wednesday, December 9, 1998

Presidential Documents

Title 3—

The President

Proclamation 7157 of December 7, 1998

Death of Albert Gore, Sr.

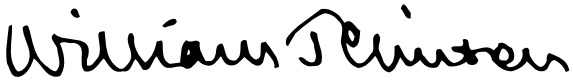
By the President of the United States of America

A Proclamation

Albert Gore, Sr., was the embodiment of everything public service ought to be. The Nation has lost a great patriot and a true role model for young people everywhere.

As a mark of respect for the memory of Albert Gore, Sr., former Senator from the State of Tennessee, I hereby order, by the authority vested in me as President by the Constitution and the laws of the United States of America, that the flag of the United States shall be flown at half-staff upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions on Tuesday, December 8, 1998. I also direct that the flag shall be flown at half-staff on that day at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of December, 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.



[FR Doc. 98–32952
Filed 12–8–98; 10:54 am]
Billing code 3195–01–P

Federal Register
Vol. 63, No. 236
Wednesday, December 9, 1998

Presidential Documents

Title 3—

The President

Executive Order 13106 of December 7, 1998

Adjustments of Certain Rates of Pay and Delegation of a Federal Pay Administration Authority

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the laws cited herein, it is hereby ordered as follows:

Section 1. *Statutory Pay Systems.* The rates of basic pay or salaries of the statutory pay systems (as defined in 5 U.S.C. 5302(1)), as adjusted under 5 U.S.C. 5303(a), in accordance with section 647(a) of the Treasury and General Government Appropriations Act, 1999, as incorporated in Division A, section 101(h) of Public Law 105–277, are set forth on the schedules attached hereto and made a part hereof:

(a) The General Schedule (5 U.S.C. 5332(a)) at Schedule 1;

(b) The Foreign Service Schedule (22 U.S.C. 3963) atSchedule 2; and

(c) The schedules for the Veterans Health Administrationof the Department of Veterans Affairs (38 U.S.C. 7306, 7404; section 301(a) of Public Law 102–40) at Schedule 3.

Sec. 2. *Senior Executive Service.* The rates of basic pay for senior executives in the Senior Executive Service, as adjusted under 5 U.S.C. 5382, are set forth on Schedule 4 attached hereto and made a part hereof.

Sec. 3. *Executive Salaries.* The rates of basic pay or salaries for the following offices and positions, which remain unchanged pursuant to section 621 of the Treasury and General Government Appropriations Act, 1999, as incorporated in Division A, section 101(h) of Public Law 105–277, are set forth on the schedules attached hereto and made a part hereof:

(a) The Executive Schedule (5 U.S.C. 5312–5318) at Schedule 5;

(b) The Vice President (3 U.S.C. 104) and the Congress (2 U.S.C. 31) at Schedule 6; and

(c) Justices and judges (28 U.S.C. 5, 44(d), 135, 252, and 461(a)) at Schedule 7.

Sec. 4. *Uniformed Services.* Pursuant to sections 601 and 604 of Public Law 105–85, the rates of monthly basic pay (37 U.S.C. 203(a)) for members of the uniformed services and the rate of monthly cadet or midshipman pay (37 U.S.C. 203(c)) are set forth on Schedule 8 attached hereto and made a part hereof.

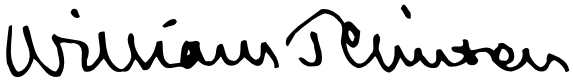
Sec. 5. *Locality-Based Comparability Payments.* (a) Pursuant to section 5304 of title 5, United States Code, and in accordance with section 647(a) of the Treasury and General Government Appropriations Act, 1999, as incorporated in Division A, section 101(h) of Public Law 105–277, locality-based comparability payments shall be paid in accordance with Schedule 9 attached hereto and made a part hereof.

(b) The Director of the Office of Personnel Management shall take such actions as may be necessary to implement these payments and to publish appropriate notice of such payments in the **Federal Register.**

Sec. 6. *Effective Dates.* Schedule 8 is effective on January 1, 1999. The other schedules contained herein are effective on the first day of the first applicable pay period beginning on or after January 1, 1999.

Sec. 7. *Prior Order Superseded.* Executive Order 13071 of December 29, 1997, is superseded.

Sec. 8. *Delegation of a Federal Pay Administration Authority.* Executive Order 12748, as amended, is further amended in section 2(c) by deleting ''5304(h)'' and inserting ''5304(g)–(h)'' in lieu thereof.



THE WHITE HOUSE,
December 7, 1998.
Billing Code 3195–01–P

SCHEDULE 1--GENERAL SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1999)

	1	2	3	4	5	6	7	8	9	10
GS-1	$13,362	$13,807	$14,252	$14,694	$15,140	$15,401	$15,838	$16,281	$16,299	$16,718
2	15,023	15,380	15,878	16,299	16,482	16,967	17,452	17,937	18,422	18,907
3	16,392	16,938	17,484	18,030	18,576	19,122	19,668	20,214	20,760	21,306
4	18,401	19,014	19,627	20,240	20,853	21,466	22,079	22,692	23,305	23,918
5	20,588	21,274	21,960	22,646	23,332	24,018	24,704	25,390	26,076	26,762
6	22,948	23,713	24,478	25,243	26,008	26,773	27,538	28,303	29,068	29,833
7	25,501	26,351	27,201	28,051	28,901	29,751	30,601	31,451	32,301	33,151
8	28,242	29,183	30,124	31,065	32,006	32,947	33,888	34,829	35,770	36,711
9	31,195	32,235	33,275	34,315	35,355	36,395	37,435	38,475	39,515	40,555
10	34,353	35,498	36,643	37,788	38,933	40,078	41,223	42,368	43,513	44,658
11	37,744	39,002	40,260	41,518	42,776	44,034	45,292	46,550	47,808	49,066
12	45,236	46,744	48,252	49,760	51,268	52,776	54,284	55,792	57,300	58,808
13	53,793	55,586	57,379	59,172	60,965	62,758	64,551	66,344	68,137	69,930
14	63,567	65,686	67,805	69,924	72,043	74,162	76,281	78,400	80,519	82,638
15	74,773	77,265	79,757	82,249	84,741	87,233	89,725	92,217	94,709	97,201

SCHEDULE 2--FOREIGN SERVICE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1999)

Step	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 7	Class 8	Class 9
1	$74,773	$60,589	$49,095	$39,782	$32,235	$28,817	$25,761	$23,030	$20,588
2	77,016	62,407	50,568	40,975	33,202	29,682	26,534	23,721	21,206
3	79,327	64,279	52,085	42,205	34,198	30,572	27,330	24,433	21,842
4	81,706	66,207	53,647	43,471	35,224	31,489	28,150	25,166	22,497
5	84,158	68,193	55,257	44,775	36,281	32,434	28,994	25,920	23,172
6	86,682	70,239	56,915	46,118	37,369	33,407	29,864	26,698	23,867
7	89,283	72,346	58,622	47,502	38,490	34,409	30,760	27,499	24,583
8	91,961	74,517	60,381	48,927	39,645	35,441	31,683	28,324	25,321
9	94,720	76,752	62,192	50,395	40,834	36,505	32,633	29,174	26,080
10	97,201	79,055	64,058	51,906	42,059	37,600	33,612	30,049	26,863
11	97,201	81,427	65,980	53,464	43,321	38,728	34,621	30,950	27,669
12	97,201	83,869	67,959	55,068	44,621	39,889	35,659	31,879	28,499
13	97,201	86,385	69,998	56,720	45,959	41,086	36,729	32,835	29,354
14	97,201	88,977	72,098	58,421	47,338	42,319	37,831	33,820	30,234

SCHEDULE 3--VETERANS HEALTH ADMINISTRATION SCHEDULES
DEPARTMENT OF VETERANS AFFAIRS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1999)

Schedule for the Office of the Under Secretary for Health
(38 U.S.C. 7306)*

Deputy Under Secretary for Health	$126,986 **
Associate Deputy Under Secretary for Health	121,628 ***
Assistant Under Secretaries for Health	118,043 ***

	Minimum	Maximum
Medical Directors	$100,715	$114,146 ***
Service Directors	87,696	108,911
Director, National Center for Preventive Health	74,773	108,911

Physician and Dentist Schedule

Director Grade	$87,696	$108,911
Executive Grade	80,978	103,203
Chief Grade	74,773	97,201
Senior Grade	63,567	82,638
Intermediate Grade	53,793	69,930
Full Grade	45,236	58,808
Associate Grade	37,744	49,066

Clinical Podiatrist and Optometrist Schedule

Chief Grade	$74,773	$97,201
Senior Grade	63,567	82,638
Intermediate Grade	53,793	69,930
Full Grade	45,236	58,808
Associate Grade	37,744	49,066

Physician Assistant and Expanded-Function Dental Auxiliary Schedule ****

Director Grade	$74,773	$97,201
Assistant Director Grade	63,567	82,638
Chief Grade	53,793	69,930
Senior Grade	45,236	58,808
Intermediate Grade	37,744	49,066
Full Grade	31,195	40,555
Associate Grade	26,844	34,899
Junior Grade	22,948	29,833

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* This schedule does not apply to the Assistant Under Secretary for Nursing Programs or the Director of Nursing Services. Pay for these positions is set by the Under Secretary for Health under 38 U.S.C. 7451.

** Pursuant to section 7404(d)(1) of title 38, United States Code, the rate of basic pay payable to this employee is limited to the rate for level IV of the Executive Schedule, which is $118,400.

*** Pursuant to section 7404(d)(2) of title 38, United States Code, the rate of basic pay payable to these employees is limited to the rate for level V of the Executive Schedule, which is $110,700.

**** Pursuant to section 301(a) of Public Law 102-40, these positions are paid according to the Nurse Schedule in 38 U.S.C. 4107(b) as in effect on August 14, 1990, with subsequent adjustments.

SCHEDULE 4--SENIOR EXECUTIVE SERVICE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1999)

ES-1	$102,300
ES-2	107,100
ES-3	112,000
ES-4	118,000
ES-5	118,400
ES-6	118,400

SCHEDULE 5--EXECUTIVE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1999)

level I	$151,800
level II	136,700
level III	125,900
level IV	118,400
level V	110,700

SCHEDULE 6--VICE PRESIDENT AND MEMBERS OF CONGRESS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1999)

Vice President	$175,400
Senators	136,700
Members of the House of Representatives	136,700
Delegates to the House of Representatives	136,700
Resident Commissioner from Puerto Rico	136,700
President pro tempore of the Senate	151,800
Majority leader and minority leader of the Senate	151,800
Majority leader and minority leader of the House of Representatives	151,800
Speaker of the House of Representatives	175,400

SCHEDULE 7--JUDICIAL SALARIES

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1999)

Chief Justice of the United States	$175,400
Associate Justices of the Supreme Court	167,900
Circuit Judges	145,000
District Judges	136,700
Judges of the Court of International Trade	136,700

SCHEDULE 8--PAY OF THE UNIFORMED SERVICES
(Effective on January 1, 1999)

Part I--MONTHLY BASIC PAY

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 24	Over 26
COMMISSIONED OFFICERS															
O-10 **	$7,838.70	$8,114.40	$8,114.40	$8,114.40	$8,114.40	$8,425.80	$8,425.80	$8,892.60	$8,892.60	$9,528.90*	$9,528.90*	$10,167.00*	$10,167.00*	$10,167.00*	$10,800.00*
O-9	6,947.10	7,129.20	7,281.00	7,281.00	7,281.00	7,466.10	7,466.10	7,776.90	7,776.90	8,425.80	8,425.80	8,892.60	8,892.60	8,892.60	9,528.90*
O-8	6,292.20	6,481.20	6,634.50	6,634.50	6,634.50	7,129.20	7,129.20	7,466.10	7,466.10	7,776.90	8,114.40	8,425.80	8,633.70	8,633.70	8,633.70
O-7	5,228.40	5,583.90	5,583.90	5,583.90	5,834.40	5,834.40	6,172.50	6,172.50	6,481.20	7,129.20	7,619.70	7,619.70	7,619.70	7,619.70	7,619.70
O-6	3,875.10	4,257.30	4,536.60	4,536.60	4,536.60	4,536.60	4,536.60	4,536.60	4,690.80	5,432.40	5,709.60	5,834.40	6,172.50	6,381.00	6,694.20
O-5	3,099.60	3,639.30	3,891.00	3,891.00	3,891.00	3,891.00	4,008.00	4,224.30	4,507.50	4,845.00	5,122.20	5,277.90	5,462.40	5,462.40	5,462.40
O-4	2,612.40	3,181.20	3,393.30	3,393.30	3,456.30	3,608.70	3,855.30	4,071.90	4,257.30	4,444.80	4,566.60	4,566.60	4,566.60	4,566.60	4,566.60
O-3 ***	2,427.60	2,714.10	2,901.90	3,210.60	3,364.50	3,484.80	3,673.80	3,855.30	3,949.50	3,949.50	3,949.50	3,949.50	3,949.50	3,949.50	3,949.50
O-2 ***	2,117.10	2,312.10	2,777.70	2,871.30	2,930.40	2,930.40	2,930.40	2,930.40	2,930.40	2,930.40	2,930.40	2,930.40	2,930.40	2,930.40	2,930.40
O-1 ***	1,838.10	1,913.10	2,312.10	2,312.10	2,312.10	2,312.10	2,312.10	2,312.10	2,312.10	2,312.10	2,312.10	2,312.10	2,312.10	2,312.10	2,312.10
COMMISSIONED OFFICERS WITH OVER 4 YEARS OF ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER															
O-3E	-	-	-	3,210.60	3,364.50	3,484.80	3,673.80	3,855.30	4,008.00	4,008.00	4,008.00	4,008.00	4,008.00	4,008.00	4,008.00
O-2E	-	-	-	2,871.30	2,930.40	3,023.40	3,181.20	3,303.00	3,393.30	3,393.30	3,393.30	3,393.30	3,393.30	3,393.30	3,393.30
O-1E	-	-	-	2,312.10	2,469.90	2,560.80	2,653.80	2,745.90	2,871.30	2,871.30	2,871.30	2,871.30	2,871.30	2,871.30	2,871.30

* Basic pay for these officers is limited to the rate of basic pay for level V of the Executive Schedule, which is $9,225.00 per month.

** For officers serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, basic pay for this grade is calculated to be $11,916.60 per month, regardless of cumulative years of service computed under section 205 of title 37, United States Code. Nevertheless, actual basic pay for these officers is limited to the rate of basic pay for level V of the Executive Schedule, which is $9,225.00 per month.

*** Does not apply to commissioned officers who have been credited with over 4 years of active duty service as an enlisted member or warrant officer.

SCHEDULE 8--PAY OF THE UNIFORMED SERVICES (PAGE 2)

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 24	Over 26
WARRANT OFFICERS															
W-5	-	-	-	-	-	-	-	-	-	-	-	$4,221.30	$4,380.90	$4,507.80	$4,697.70
W-4	$2,473.20	$2,653.80	$2,653.80	$2,714.10	$2,838.00	$2,962.80	$3,087.30	$3,303.00	$3,456.30	$3,577.80	$3,673.80	3,792.00	3,918.90	4,041.00	4,224.30
W-3	2,247.90	2,438.40	2,438.40	2,469.90	2,498.70	2,681.70	2,838.00	2,930.40	3,023.40	3,114.00	3,210.60	3,335.70	3,456.30	3,456.30	3,577.80
W-2	1,968.90	2,130.30	2,130.30	2,192.10	2,312.10	2,438.40	2,531.10	2,623.80	2,714.10	2,809.50	2,901.90	2,993.10	3,114.00	3,114.00	3,114.00
W-1	1,640.40	1,880.70	1,880.70	2,037.90	2,130.30	2,221.50	2,312.10	2,407.20	2,498.70	2,591.70	2,681.70	2,777.70	2,777.70	2,777.70	2,777.70
ENLISTED MEMBERS															
E-9 *	-	-	-	-	-	-	$2,877.30	$2,942.10	$3,008.40	$3,078.00	$3,147.00	$3,207.60	$3,375.90	$3,507.30	$3,704.70
E-8	-	-	-	-	-	$2,412.60	2,482.50	2,547.30	2,613.60	2,682.90	2,743.80	2,811.30	2,976.60	3,108.90	3,308.40
E-7	$1,684.80	$1,818.90	$1,885.50	$1,952.10	$2,018.70	2,082.90	2,149.50	2,216.70	2,316.60	2,382.60	2,448.60	2,480.40	2,647.20	2,778.90	2,976.60
E-6	1,449.30	1,579.80	1,645.50	1,715.40	1,779.90	1,844.10	1,911.60	2,010.00	2,073.30	2,140.20	2,172.60	2,172.60	2,172.60	2,172.60	2,172.60
E-5	1,271.70	1,384.20	1,451.40	1,514.70	1,614.30	1,680.30	1,746.30	1,811.10	1,844.10	1,844.10	1,844.10	1,844.10	1,844.10	1,844.10	1,844.10
E-4	1,185.90	1,252.80	1,326.60	1,428.60	1,485.30	1,485.30	1,485.30	1,485.30	1,485.30	1,485.30	1,485.30	1,485.30	1,485.30	1,485.30	1,485.30
E-3	1,117.80	1,179.00	1,225.80	1,274.70	1,274.70	1,274.70	1,274.70	1,274.70	1,274.70	1,274.70	1,274.70	1,274.70	1,274.70	1,274.70	1,274.70
E-2	1,075.80	1,075.80	1,075.80	1,075.80	1,075.80	1,075.80	1,075.80	1,075.80	1,075.80	1,075.80	1,075.80	1,075.80	1,075.80	1,075.80	1,075.80
E-1 **	959.40	959.40	959.40	959.40	959.40	959.40	959.40	959.40	959.40	959.40	959.40	959.40	959.40	959.40	959.40
E-1 ***	887.70	-	-	-	-	-	-	-	-	-	-	-	-	-	-

* For noncommissioned officers serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, or Sergeant Major of the Marine Corps, basic pay for this grade is $4,503.00 per month, regardless of cumulative years of service under section 205 of title 37, United States Code.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

SCHEDULE 8--PAY OF THE UNIFORMED SERVICES (PAGE 3)

Part II--RATE OF MONTHLY CADET OR MIDSHIPMAN PAY

The rate of monthly cadet or midshipman pay authorized by section 203(c) of title 37, United States Code, is $600.00.

Note: As a result of the enactment of sections 602-604 of Public Law 105-85, the National Defense Authorization Act for Fiscal Year 1998, the Secretary of Defense now has the authority to adjust the rates of basic allowances for subsistence and housing. Therefore, these allowances are no longer adjusted by the President in conjunction with the adjustment of basic pay for members of the uniformed services. Accordingly, the tables of allowances included in previous orders are not included here.

SCHEDULE 9--LOCALITY-BASED COMPARABILITY PAYMENTS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1999)

Locality Pay Area[1]	Rate
Atlanta, GA	6.67%
Boston-Worcester-Lawrence, MA-NH,ME,CT	9.32%
Chicago-Gary-Kenosha, IL-IN-WI	9.98%
Cincinnati-Hamilton, OH-KY-IN	8.31%
Cleveland-Akron, OH	6.92%
Columbus, OH	7.46%
Dallas-Fort Worth, TX	7.47%
Dayton-Springfield, OH	6.67%
Denver-Boulder-Greeley, CO	9.16%
Detroit-Ann Arbor-Flint, MI	10.13%
Hartford, CT	9.85%
Houston-Galveston-Brazoria, TX	12.92%
Huntsville, AL	6.31%
Indianapolis, IN	6.08%
Kansas City, MO-KS	6.51%
Los Angeles-Riverside-Orange County, CA	11.14%
Miami-Fort Lauderdale, FL	8.51%
Milwaukee-Racine, WI	6.74%
Minneapolis-St. Paul, MN-WI	7.92%
New York-Northern New Jersey-Long Island, NY-NJ-CT-PA	10.55%
Orlando, FL	5.87%
Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD	8.30%
Pittsburgh, PA	6.68%
Portland-Salem, OR-WA	7.80%
Richmond-Petersburg, VA	6.61%
Sacramento-Yolo, CA	8.27%
St. Louis, MO-IL	6.17%
San Diego, CA	8.62%
San Francisco-Oakland-San Jose, CA	13.06%
Seattle-Tacoma-Bremerton, WA	7.96%
Washington-Baltimore, DC-MD-VA-WV	7.87%
Rest of U.S.	5.87%

[1]Locality Pay Areas are defined in 5 CFR 531.603.

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  - Vessel moratorium program; comments due by 12-14-98; published 11-13-98
- Atlantic swordfish; comments due by 12-14-98; published 10-20-98
- Caribbean, Gulf, and South Atlantic fisheries—
  - Gulf of Mexico reef fish; comments due by 12-18-98; published 11-18-98
- Northeastern United States fisheries and American lobster—
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- Multi-purpose lighters; child resistance standard; comments due by 12-14-98; published 9-30-98

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  - Reformulated gasoline program; alternative analytical test methods and specifications for mixing chamber associated with animal toxicity testing; comments due by 12-17-98; published 11-17-98
  - Reformulated gasoline program; alternative analytical test methods and specifications for mixing chamber associated with animal toxicity testing; comments due by 12-17-98; published 11-17-98

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- California; comments due by 12-14-98; published 11-13-98

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- 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-1,2,4-triazin-5(4H)-one [Metribuzin], etc.; comments due by 12-15-98; published 10-16-98

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Note: The list of Public Laws for the second session of the 105th Congress has been completed and will resume when bills are enacted into law during the first session of the 106th Congress, which convenes on January 6, 1999.

A cumulative list of Public Laws for the second session of the 105th Congress was published in the **Federal Register** on November 30, 1998.