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federal register

Tuesday
March 9, 1999

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WASHINGTON, DC

WHEN: March 23, 1999 at 9:00 am.

WHERE: Office of the Federal Register
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RESERVATIONS: 202–523–4538

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Contents

Federal Register

Vol. 64, No. 45

Tuesday, March 9, 1999

Agriculture Department
See Animal and Plant Health Inspection Service
See Foreign Agricultural Service

Animal and Plant Health Inspection Service
PROPOSED RULES
Plant-related quarantine, domestic:
Karnal bunt disease—
Regulated areas reclassification, 11392–11401
NOTICES
Agency information collection activities:
Proposed collection; comment request, 11433
Environmental statements; availability, etc.:
Genetically engineered organisms; field test permits—
Monsanto Co.; corn, 11434
Nonregulated status determinations—
Monsanto Co.; genetically engineered potatoes, 11434–11435

Army Department
See Engineers Corps
NOTICES
Meetings:
Armament Retooling and Manufacturing Support Executive Advisory Committee, 11452–11453
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Multilayered ferroelectric composite waveguides, etc., 11453
Self-imaging waveguide splitters, etc., 11453

Children and Families Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 11474
Submission for OMB review; comment request, 11474–11475

Coast Guard
NOTICES
Meetings:
National Offshore Safety Advisory Committee, 11530

Commerce Department
See Economic Development Administration
See Export Administration Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Technology Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 11437

Customs Service
RULES
Trademarks, tradenames, and copyrights:
Technical amendment, 11376
NOTICES
Customhouse broker license cancellation, suspension, etc.:
Perroncino, John S., et al., 11531–11532
Trevilcock, Cleopatra D., et al.; correction, 11532

Defense Department
See Army Department
See Engineers Corps
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities—
Submission for OMB review; comment request, 11445–11450
Grants and cooperative agreements; availability, etc.:
Local educational agencies program, 11450–11451
Meetings:
Electron Devices Advisory Group, 11451–11452

Economic Development Administration
NOTICES
Trade adjustment assistance eligibility determination petitions:
P.C. Boards, Inc., et al., 11437–11438

Education Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 11454–11455
Grants and cooperative agreements; availability, etc.:
Child Care Access Means Parents in School Program, 11455–11456
Indian education programs—
Strengthening Institutions Program et al., 11751–11754
National Institute on Disability and Rehabilitation Research—
Disability and Rehabilitation Research Projects and Centers Program, 11747–11749

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Atomic energy agreements; subsequent arrangements; correction, 11456
Meetings:
Environmental Management Site-Specific Advisory Board—
Los Alamos National Laboratory, NM, 11456
Secretary of Energy Advisory Committee, 11456–11457
Presidential permit applications:
Frontera Generation L.P., 11457–11458

Engineers Corps
RULES
Administrative appeal process, 11707–11721
NOTICES
Environmental statements; notice of intent:
Great Egg Harbor Inlet to Townsends Inlet, Cape May County, NJ; storm damage reduction project, 11453–11454

Environmental Protection Agency
RULES
Air pollutants, hazardous; national emission standards:
Polymer and resin production facilities (Groups I and IV) and volatile organic compound (VOC) emissions from polymer manufacturing industry, 11535–11554

PROPOSED RULES
Air pollutants, hazardous; national emission standards:
Polymer and resin production facilities (Groups I and IV) and volatile organic compound (VOC) emissions from polyether polyols production, 11559–11705
Polymer and resin production facilities (Groups I and IV) and volatile organic compound (VOC) emissions from polymer manufacturing industry, 11555–11557

Executive Office of the President
See Presidential Documents

Export Administration Bureau
NOTICES
Meetings:
Presindent's Export Council, 11438–11439

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing; correction, 11533
Eurocopter France, 11375–11376
PROPOSED RULES
Airworthiness directives:
Bell Helicopter Textron Canada, 11401–11402
Class D and Class E airspace; correction, 11533
Class E airspace; correction, 11533

Federal Communications Commission
NOTICES
Agency information collection activities:
Reporting and recordkeeping requirements, 11471–11472

Federal Emergency Management Agency
RULES
Flood elevation determinations:
Various States, 11378–11389
PROPOSED RULES
Flood elevation determinations:
Various States, 11403–11414
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 11472–11473

Federal Energy Regulatory Commission
NOTICES
Meetings; Sunshine Act, 11469–11471
Applications, hearings, determinations, etc.:
ANR Pipeline Co., 11458–11459
CNG Transmission Corp., 11459
Colorado Interstate Gas Co., 11459
Columbia Gas Transmission Corp., 11459–11460
Columbia Gulf Transmission Co., 11460–11461
Destin Pipeline Co., L.L.C., 11461
Dynegy Midstream Pipeline, Inc., 11458
KO Transmission Co., 11461–11462
Milford Power L.P., 11462
Panhandle Eastern Pipe Line Co., 11462
PG&E Gas Transmission, Northwest Corp., 11462–11463
Reliant Energy Gas Transmission Co., 11463
Sea Robin Pipeline Co., 11463
Shenandoah Gas Co., 11463–11465
Southern Natural Gas Co., 11465 , 11465
South Georgia Natural Gas Co., 11465
Southwest Gas Storage Co., 11466
Tennessee Gas Pipeline Co., 11466
Texas Eastern Transmission Corp., 11466–11467
Transcontinental Gas Pipe Line Corp., 11467
Transwestern Pipeline Co., 11467
Trunkline Gas Co., 11468
Viking Gas Transmission Co., 11468
Williston Basin Interstate Pipeline Co., 11468

Federal Highway Administration
PROPOSED RULES
Motor carrier safety standards:
Transportation Equity Act for 21st Century; implementation—
Commercial motor carrier safety assistance program; State responsibility, 11414–11431

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 11473
Formations, acquisitions, and mergers, 11473
Permissible nonbanking activities, 11473–11474

Federal Trade Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request; correction, 11533

Fish and Wildlife Service
NOTICES
Reports and guidance documents; availability, etc.:
Habitat conservation planning and incidental take permitting process; handbook addendum, 11485–11490

Food and Drug Administration
RULES
Mutual recognition agreements:
U.S.-European Community—
Pharmaceutical good manufacturing practices and medical devices; public docket and FDA contact points establishment, 11376–11377

Foreign Agricultural Service
NOTICES
Uruguay Round Agreements Act (URAA); agricultural safeguard trigger levels, 11435–11437

General Services Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities—
Submission for OMB review; comment request, 11445–11450

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
See Substance Abuse and Mental Health Services Administration

Health Resources and Services Administration
NOTICES
Meetings:
Nurse Education and Practice National Advisory Council, 11476
National vaccine injury compensation program:
Petitions received, 11476–11478

Organization, functions, and authority delegations:
Facilities and Loans Division, 11478

Housing and Urban Development Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 11483–11484

Immigration and Naturalization Service
RULES
Immigration:
Aliens—
Employment eligibility verification; acceptable receipts; correction, 11533

Indian Affairs Bureau
NOTICES
Indian Child Welfare Act:
Designated tribal agents; annual list, 11490–11499

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See National Park Service
NOTICES
Meetings:
American Samoa Economic Advisory Commission, 11484

Internal Revenue Service
RULES
Income taxes, etc.:
Witholding of tax on certain U.S. source income paid to foreign persons and related collection, refunds, and credits, etc.; correction, 11378

International Trade Administration
NOTICES
Antidumping:
Chloropicrin from—
China, 11440–11442
Tapered roller bearings and parts, finished and unfinished, from—
China, 11442
Antidumping and countervailing duties:
Administrative review requests, 11439–11440
Applications, hearings, determinations, etc.:
Johns Hopkins University, 11442–11443

Justice Department
See Immigration and Naturalization Service

Labor Department
See Occupational Safety and Health Administration

National Aeronautics and Space Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities—
Submission for OMB review; comment request, 11445–11450

National Highway Traffic Safety Administration
RULES
Consumer information:
Utility vehicle label, 11723–11734

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Crab and scallop fisheries; overfishing, maximum sustainable yield, and optimum yield, 11390–11391
PROPOSED RULES
Fishery conservation and management:
Northeastern United States fisheries—
Sea scallop management, 11431–11432
NOTICES
Meetings:
Mid-Atlantic Fishery Management Council, 11443
Modernization Transition Committee, 11443
New England Fishery Management Council, 11443–11444
Permits:
Endangered and threatened species, 11444–11445
Reports and guidance documents; availability, etc.:
Habitat conservation planning and incidental take permitting process; handbook addendum, 11485–11490

National Park Service
RULES
Historic preservation program procedures; State, Tribal, and local governments, 11735–11746
NOTICES
Meetings:
Cape Cod National Seashore Advisory Commission, 11499
National Register of Historic Places:
Pending nominations, 11499–11500

National Science Foundation
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 11505
Year 2000 computer readiness; public's views and attitudes; data collection, 11505–11506

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Commonwealth Edison Co., 11506–11507
Meetings; Sunshine Act, 11507–11508
Reports and guidance documents; availability, etc.:
Materials licenses, consolidated guidance—
Commercial radiopharmacy licenses; program-specific guidance, 11509–11510
NRC enforcement actions; generally licensed devices containing byproduct material, 11508–11509

Occupational Safety and Health Administration
NOTICES
Nationally recognized testing laboratories, etc.:
Electro-Test, Inc., 11500–11501
Entela, Inc., 11501–11502
MET Laboratories, Inc., 11502–11503
Southwest Research Institute, 11503–11505

Personnel Management Office
NOTICES
Meetings:
Federal Prevailing Rate Advisory Committee, 11510

Postal Service
PROPOSED RULES
Domestic Mail Manual:
Flat-size periodicals and standard mail; packaging material standards, 11402–11403

Presidential Documents
PROCLAMATIONS
Special observances:
Blackmun, Harry A., death, 11373

Public Health Service
See Food and Drug Administration
See Health Resources and Services Administration
See Substance Abuse and Mental Health Services Administration

Research and Special Programs Administration
NOTICES
Hazardous materials transportation:
Department-wide program evaluation, 11484

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 11510–11523
Chicago Board Options Exchange, Inc., 11523–11527
Cincinnati Stock Exchange, Inc., 11527–11528

Substance Abuse and Mental Health Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Center for Substance Abuse Treatment activities, 11478–11483

Surface Transportation Board
NOTICES
Railroad services abandonment:
Norfolk Southern Railway Co., 11530–11531

Technology Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
National Medal of Technology Nomination Evaluation Committee, 11445

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
See Surface Transportation Board
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 11528
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 11528
Hazardous materials transportation:
Department-wide program evaluation, 11484

Treasury Department
See Customs Service
See Internal Revenue Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 11531

United States Information Agency
NOTICES
Art objects; importation for exhibition:
Projects 68: William Kentridge, 11532

Separate Parts In This Issue

Part II
Environmental Protection Agency, 11535–11557

Part III
Environmental Protection Agency, 11559–11705

Part IV
Department of Defense, Department of the Army, Corps of Engineers, 11707–11721

Part V
Department of Transportation, National Highway Administration, 11723–11734

Part VI
Department of Interior, National Park Service, 11735–11746

Part VII
Department of Education, 11747–11749

Part VIII
Department of Education, 11751–11754

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:

7172 11373

7 CFR

Proposed Rules:

301 11392

8 CFR

274a 11533

14 CFR

39 (2 documents) 11375, 11533

Proposed Rules:

39 11401

71 (2 documents) 11533

19 CFR

133 11376

21 CFR

26 11376

26 CFR

1 11378

33 CFR

320 11708

326 11708

331 11708

36 CFR

61 11736

39 CFR

Proposed Rules:

111 11402

40 CFR

60 11536

63 11536

Proposed Rules:

60 11555

63 (2 documents) 11555, 11560

44 CFR

65 (4 documents) 11378, 11380, 11382, 11384

67 (2 documents) 11386, 11388

Proposed Rules:

67 (2 documents) 11403, 11409

49 CFR

571 11724

575 11724

Proposed Rules:

350 11414

50 CFR

679 11390

Proposed Rules:

648 11431

Federal Register
Vol. 64, No. 45
Tuesday, March 9, 1999

Presidential Documents

Title 3—

The President

Proclamation 7172 of March 4, 1999

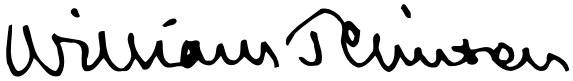
Death of Harry A. Blackmun

By the President of the United States of America

A Proclamation

As a mark of respect for the memory of Harry A. Blackmun, retired Associate Justice of the Supreme Court of the United States, 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 on the day of his interment. On such day the flag shall be flown at half-staff until sunset 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; and at all U.S. 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 fourth day of March, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-third.



[FR Doc. 99–5953
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Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 64, No. 45
Tuesday, March 9, 1999

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–64–AD; Amendment 39–11067; AD 99–06–03]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS–365N, N1, and N2 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Eurocopter France Model AS–365N, N1, and N2 helicopters, that requires inspecting the helicopter to determine if a certain main rotor head frequency adapter (frequency adapter) is installed and, if so, replacing it with an airworthy frequency adapter. This amendment is prompted by a report of disbonding of the metal center section of a frequency adapter from the elastomer on a main rotor head caused by a lack of adherence during the production process. The actions specified by this AD are intended to prevent increased vibrations caused by disbonding of the center section of a frequency adapter from the elastomer and subsequent reduced controllability of the helicopter.

EFFECTIVE DATE: April 13, 1999.

FOR FURTHER INFORMATION CONTACT: Mike Mathias, Aerospace Engineer, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to Eurocopter France Model AS–365N, N1, and N2 helicopters was published in the **Federal Register** on June 5, 1998 (63 FR 30662). That action proposed to require inspecting for certain frequency adapters and if they are installed, replacing them with airworthy frequency adapters.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 91 helicopters of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $5,200 per helicopter. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $505,960.

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 will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under 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 FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–64–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

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 (AD) to read as follows:

AD 99–06–03 Eurocopter France: Amendment 39–11067. Docket No. 97–SW–64–AD.

Applicability: Model AS–365N, N1, and N2 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter 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 helicopters 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 helicopter from the applicability of this AD.

Compliance: Required within the next 100 hours time-in-service or 6 calendar months, whichever occurs first, unless accomplished previously.

To prevent vibrations caused by disbonding of the center section of a frequency adapter from the elastomer on the main rotor head and subsequent reduced controllability of the helicopter, accomplish the following:

(a) Determine the part number, serial number, and date of manufacture of the main rotor head frequency adapter (frequency adapter).

(b) If a frequency adapter part number (P/N) 704A33–640–031 (E1T2624–01A), or delivered in pairs under the P/N 365A31–

1858–01, manufactured before April 1, 1991, with a serial number (S/N) equal to or less than 8188, or P/N 704A33–640–046 (E1T3023–01), or delivered in pairs under the P/N 365A31–1858–02, manufactured before April 1, 1991, with a S/N equal to or less than 3122, is installed, remove the frequency adapter and replace it with an airworthy frequency adapter.

Note 2: Eurocopter France AS 365 Service Bulletin No. 01.00.44, dated May 9, 1996, pertains to the subject of 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, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

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

(e) This amendment becomes effective on April 13, 1999.

Note 4: The subject of this AD is addressed in Direction General De L'Aviation Civile (France) AD 96–117–040(B), dated June 19, 1996.

Issued in Fort Worth, Texas, on March 1, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–5726 Filed 3–8–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 133

[T.D. 99–24]

Technical Amendment to the Customs Regulations

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document makes a minor technical change to the Customs Regulations, in accordance with Customs policy of periodically reviewing its regulations to make sure that they are current, and to eliminate needless repetition.

EFFECTIVE DATE: March 9, 1999.

FOR FURTHER INFORMATION CONTACT: Russell Berger, Office of Regulations and Rulings, 202–927–1605.

SUPPLEMENTARY INFORMATION:

Background

The general and specific sectional authority citations for part 133, Customs Regulations (19 CFR part 133), are set forth at the beginning of the part following its table of contents.

However, the specific statutory authority citations for certain sections in part 133 are also repeated immediately following the text of the sections.

Also, it is observed that 31 U.S.C. 483a is cited as authority for a number of sections in part 133 following the text of such sections. However, by Pub. L. 97–258 (September 13, 1982), 31 U.S.C. 483a was revised and replaced with 31 U.S.C. 9701 which is included under the general authority citation for part 133.

Accordingly, to eliminate unnecessary repetition and to make sure that the statutory authority listed for part 133 is correct and current, the statutory citations that appear in parentheses below the text of any regulatory sections in subparts A, B, D, E and F of part 133 will be deleted. It is noted that a document amending subpart C of part 133 that was published in the **Federal Register** (64 FR 9058) on February 24, 1999, as T.D. 99–21, effective as of March 26, 1999, no longer sets forth any statutory authority citations following the text of the regulatory sections in that subpart.

Inapplicability of Public Notice and Comment and Delayed Effective Date Requirements, the Regulatory Flexibility Act and Executive Order 12866

Because this amendment is merely of a minor editorial nature, and conforms to existing law, notice and public procedure in this case are inapplicable and unnecessary pursuant to 5 U.S.C. 553(b)(B), and pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required. Since this document is not subject to the requirements of 5 U.S.C. 553, it is not subject to the provision of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Nor does the amendment result in a ''significant regulatory action'' under E.O. 12866.

List of Subjects in 19 CFR Part 133

Copyright, Customs duties and inspection, Fees assessment, Imports, Penalties, Prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise (counterfeit goods), Seizures and forfeitures, Trade names, Trademarks, Unfair competition.

Amendment to the Regulations

Part 133, Customs Regulations (19 CFR part 133), is amended as set forth below.

PART 133—TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

1. The authority citation for part 133 continues to read in part as follows:

Authority: 17 U.S.C. 101, 601, 602, 603; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

* * * * *

2. Part 133 is amended by removing the statutory authority citations that appear in parentheses immediately below the texts of §§ 133.1, 133.2–133.7, 133.11–133.13, 133.15, 133.33, 133.35, 133.36, 133.46, and 133.53.

Dated: March 3, 1999.

Harold M. Singer,

Chief, Regulations Branch.

[FR Doc. 99–5715 Filed 3–8–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 26

[Docket No. 98S–1064]

Implementation of the Mutual Recognition Agreement Between the United States and the European Community; Pharmaceutical GMP's and Medical Devices; Establishment of a Public Docket and FDA Contact Points

AGENCY: Food and Drug Administration, HHS.

ACTION: Establishment of a public docket and FDA contact points.

SUMMARY: The Food and Drug Administration (FDA) is announcing the establishment of a public docket for the submission and public availability of information concerning the implementation of the Mutual Recognition Agreement (MRA) between the United States and the European Community (EC) in the areas of pharmaceutical good manufacturing practices (GMP's) and medical devices. FDA is also establishing contact points for information covering particular subjects under the MRA implementation, and the agency is making appropriate information available on the FDA web site.

DATES: Written comments may be submitted at any time.

ADDRESSES: Submit written comments to the Dockets Management Branch

(HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Documents concerning FDA's implementation of the MRA are available for public examination in the Dockets Management Branch.

FOR FURTHER INFORMATION CONTACT:

Pharmaceutical GMP's:

For information regarding human drug GMP's: Brian J. Hasselbalch, Division of Manufacturing and Product Quality (HFD–325), Office of Compliance, Center for Drug Evaluation and Research, Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855–2737, 301–827–7285, FAX: 301–594–2202, or E-mail: ''hasselbalchb@cder.fda.gov''.

For information regarding animal drug GMP's: Judith A. Gushee, Office of Surveillance and Compliance (HFV–232), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855–2773, 301–827–0150, FAX: 301–594–1807, or E-mail: ''jgushee@bangate.fda.gov''.

For information regarding human biologic GMP's: Jennifer A. Thomas, Office of Compliance and Biologics Quality (HFM–600), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6190, FAX: 301–594–1944, or E-mail: ''thomasj@cber.fda.gov''.

Medical Devices:

For information regarding 510(k)'s: Eric J. Rechen, Office of Device Evaluation (HFZ–402), Center for Devices and Radiological Health, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186, FAX: 301–594–2977, or E-mail: ''ejr@cdrh.fda.gov''.

For information regarding device quality systems and GMP's: Kimberly A. Trautman, Office of Compliance (HFZ–340), Center for Devices and Radiological Health, Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4646, FAX: 301–594–4672, or E-mail: ''kat@cdrh.fda.gov''.

For information regarding third-party program administrative matters and general MRA issues: John F. Stigi, Division of Small Manufacturers Assistance (HFZ–220), Office of Health and Industry Programs, Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–443–7491, FAX: 301–443–8818, or E-mail: ''jfs@cdrh.fda.gov''.

SUPPLEMENTARY INFORMATION: On November 6, 1998, FDA published a final rule in the **Federal Register** (63 FR 60122) that amended its regulations under an international agreement between the United States and the EC by adding part 26 (21 CFR part 26), subparts A through C entitled ''Mutual Recognition of Pharmaceutical Good Manufacturing Practice Inspection Reports, Medical Device Quality System Audit Reports, and Certain Medical Device Product Evaluation Reports Between the United States and the European Community.'' This rule became effective on December 7, 1998. Under the terms of subpart A of part 26, the importing country authority may normally endorse pharmaceutical GMP inspection reports provided by exporting authorities determined to be equivalent. Under the terms of subpart B of part 26, the importing country authority may endorse quality system audits performed according to the importing country authority's requirements and procedures. In addition, certain medical device product evaluation reports performed by the exporting country's conformity assessment bodies (CAB's), according to the importing country authority's requirements and procedures, may normally be endorsed.

In response to comments on FDA's proposed rule published in the **Federal Register** of April 10, 1998 (63 FR 17744), FDA stated that it plans to make public summaries of key meetings held with its EC counterparts concerning implementation of the MRA and FDA's regulation, and that it will make available to the public the administrative file that constitutes the basis for any of FDA's equivalence determinations or listings, subject to exemptions from disclosure provided in the Freedom of Information Act, the Privacy Act, and FDA's regulations (see comment 1 in section II.C at 60122 at 60127).

Through this notice, FDA is establishing a new docket (Docket No. 98S–1064) in order to make available at a convenient location public information concerning the implementation of part 26.

Also, in the proposed rule (63 FR 17744), FDA requested (see also comment 1 in section II.C at 60122 at 60127) that all interested persons send to FDA information that is: (1) Generally relevant to implementation of part 26, and (2) of particular relevance to equivalence criteria described in part 26, Appendix D of subpart A and their application to authorities listed in Appendix B of subpart A of part 26. The notice instructed persons to send their information to docket 98N–0185 (the rulemaking docket).

FDA is particularly interested in obtaining the following types of information from any interested persons:

(a) Information relevant to determining the equivalence of EC Member State regulatory authorities that may provide pharmaceutical GMP inspection reports to FDA under the MRA, and

(b) Information relevant to the assessment procedures of CAB's that may provide medical device quality system evaluation reports and certain medical device product evaluation reports to the FDA under the MRA.

Because FDA desires to separate the administrative record of the rulemaking for part 26 from the administrative records covering implementation of part 26, FDA hereby requests that all information relevant to the implementation of part 26 be sent to the docket established under this notice (Docket No. 98S–1064). Furthermore, any information concerning implementation of part 26 and any information pertaining to the equivalence or listing criteria described previously that has already been sent to the rulemaking docket will be transferred to the new docket established for part 26 implementation.

FDA will also make appropriate information concerning the implementation of the MRA and part 26 available to the public on FDA's website at ''http://www.fda.gov'' under the ''International'' section.

Dated: March 2, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–5681 Filed 3–8–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8804]

RIN 1545–AW39

General Revision of Regulations Relating to Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons and Related Collection, Refunds, and Credits; Revision of Information Reporting and Backup Withholding Regulations; and Removal of Regulations Under Parts 1 and 35a and of Certain Regulations Under Income Tax Treaties; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to technical amendments.

SUMMARY: This document contains a correction to final regulations (TD 8804), which were published in the **Federal Register** Thursday, December 31, 1998 (63 FR 72183), relating to the withholding of income tax on certain U.S. source income payments to foreign persons.

DATES: This correction is effective January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Lilo Hester, (202) 622–3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under sections 1441, 1442, and 1443 of the Internal Revenue Code.

Need for Correction

As published, TD 8804 contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final rule; technical amendments (TD 8804), which was the subject of FR Doc. 98–34359, is corrected as follows:

§§ 1.6041–1 and 1.6042–2 [Corrected]

On page 72188, in the table following ''Par. 15.'', two entries are added in numerical order to read as follows:

Section	Remove	Add
* * * * *	*	*
1.6041–1(d)(5), first sentence	December 31, 1998.	December 31, 1999.
* * * * *	*	*
1.6042–2(a)(l)(iii), first sentence	1099A	1099
* * * * *	*	*

Michael L. Slaughter,

Acting Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 99–5531 Filed 3–8–99; 8:45 am]

BILLING CODE 4830–01–U

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7281]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama:					
Madison	City of Huntsville	January 7, 1999, January 14, 1999, *The Huntsville Times*.	The Honorable Loretta Spencer, Mayor of the City of Huntsville, P.O. Box 308, Huntsville, Alabama 35804.	December 30, 1998	010153 D
Madison	Unincorporated Area.	January 7, 1999, January 14, 1999, *The Huntsville Times*.	Mr. Mike Gillespie, Chairman of the Madison County Commission, Madison County Courthouse, 100 Northside Square, Huntsville, Alabama 35801.	December 30, 1998	010151 D
Connecticut: New London.	Town of East Lyme.	November 16, 1998, November 23, 1998, *The Day*.	Mr. Wayne Fraser, First Selectman of the The Day Town of East Lyme, P.O. Box 519, Niantic, Connecticut 06357.	February 21, 1999	090096
Delaware: New Castle.	City of Newark	December 22, 1998, December 29, 1998, *The News Journal*.	Mr. Carl F. Luft, City of Newark Manager, P.O. Box 390, Newark, Delaware 19715.	March 29, 1999	100025 F
Florida: Manatee	Unincorporated Areas.	December 23, 1998, December 30, 1998, *The Bradenton Herald*.	Mr. Ernie Padgett, Manatee County Administrator, P.O. Box 1000, Bradenton, Florida 34206.	December 9, 1998	120153
Illinois: Boone	City of Belvidere	January 14, 1999, January 21, 1999, *Belvidere Daily Republican*.	The Honorable Fred Brereton, Mayor of the City of Belvidere, 119 South State Street, Belvidere, Illinois 61008.	September 10, 1998	170008 B
North Carolina: Orange, Durham, and Chatham.	City of Chapel Hill	November 12, 1998, November 19, 1998, *Raleigh News and Observer*.	The Honorable Rosemary Waldorf, Mayor of the Town of Chapel Hill, Municipal Building 306 North Columbia Street, Chapel Hill, North Carolina 27516–2124.	February 17, 1999	370180
Ohio:					
Franklin	City of Columbus	January 12, 1999, January 19, 1999, *The Columbus Dispatch*.	The Honorable Gregory Lashutka, Mayor of the City of Columbus, 90 West Broad Street, Columbus, Ohio 43215.	April 19, 1999	390170 G
Franklin	City of Reynoldsburg.	January 12, 1999, January 19, 1999, *The Columbus Dispatch*.	The Honorable Robert McPherson, Mayor of the City of Reynoldsburg, 7232 East Main Street, Reynoldsburg, Ohio 43068–2080.	April 19, 1999	390177 G
Lake	Unincorporated Areas.	January 7, 1999, January 14, 1999, *The News-Herald*.	Mr. Dale Fellows, President of the Lake County, Board of Commissioners, 105 Main Street, Painesville, Ohio 44077.	December 30, 1998	390771 C
Minnesota: Anoka	City of Blaine	January 8, 1999, January 15, 1999, *Blaine-Spring Park Life*.	The Honorable Thomas Ryan, Mayor of the City of Blaine, 9150 Central Avenue Northeast, Blaine, Minnesota 55434–3499.	April 15, 1999	270007
Mississippi:					

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
DeSoto	City of Southaven	December 30, 1998, January 6, 1999, *DeSoto Times*.	The Honorable Charles G. Davis, Mayor of the City of Southaven, P.O. Box 425, 8710 Northwest Drive, Southaven, Mississippi 38671.	April 6, 1999, ...	280331 E
Hinds, Rankin, and Madison.	City of Jackson ...	January 7, 1999, January 14, 1999, *The Clarion-Ledger*.	The Honorable Harvey Johnson, Jr., Mayor of the City of Jackson, 219 South President Street, P.O. Box 17, Jackson, Mississippi 39205–0017.	April 14, 1999	280072 F
Pennsylvania: Cambria.	Township of Stonycreek.	December 17, 1998, December 24, 1998, *The Tribune-Democrat*.	Mr. William Knipple, President of the Board of Directors, Township of Stonycreek, 1610 Bedford Street, Johnstown, Pennsylvania 15902.	March 24, 1999	420241 C
South Carolina: Anderson.	Unincorporated Areas.	November 18, 1998, November 25, 1998, *Anderson Independent Mailer*.	Mr. Joseph Preston, Anderson County Administrator, 100 South Main Street, Anderson, South Carolina 29622.	February 23, 1999	450013
Virginia: Prince William.	City of Manassas	January 22, 1999, January 29, 1999, *Manassas Journal Messenger*.	The Honorable Marvin L. Gillum, Mayor of the City of Manassas, P.O. Box 560, Manassas, Virginia 20108.	April 29, 1999	510112

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: February 26, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–5768 Filed 3–8–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
North Carolina:					
Mecklenburg (FEMA Docket No. 7269).	City of Charlotte	September 4, 1998, September 11, 1998, *Charlotte Observer*.	The Honorable Pat McCrory, Mayor of the City of Charlotte, 600 East 4th Street, Charlotte, North Carolina 28202.	August 28, 1998.	370159 B
Cabarrus (FEMA Docket No. 7269).	City of Concord	September 4, 1998, September 11, 1998, *The Independent Tribune*.	The Honorable George W. Liles, Mayor of the City of Concord, P.O. Box 308, Concord, North Carolina 28026.	December 10, 1998.	370037 D
Cabarrus (FEMA Docket No. 7269).	Unincorporated Areas.	September 4, 1998, September 11, 1998 *The Independent Tribune*.	Mr. Frank Cliffton, Manager of Cabarrus County, P.O. Box 707, Concord, North Carolina 28026–0707.	December 10, 1998.	370036 D
Delaware: New Castle (FEMA Docket No. 7269).	Unincorporated Areas.	September 8, 1998, September 15, 1998, *The News Journal*.	Mr. Thomas P. Gordon, Executive of New Castle County, Louis L. Redding City/County Building, 800 French Street, Wilmington, Delaware 19801.	December 14, 1998.	105085 F
Illinois: Will (FEMA Docket No. 7269).	Village of Plainfield.	July 29, 1998, August 5, 1998, *The Enterprise*.	Mr. Terrance Burghard, Village of Plainfield Administrator, Lily Cache Plaza, 23145 West Lincoln Highway, Plainfield, Illinois 60544.	July 22, 1998 ...	170771 E
Tennessee:					
Shelby (FEMA Docket No. 7273).	City of Bartlett ..	October 2, 1998, October 9, 1998, *The Commercial Appeal*.	The Honorable Bobby K. Flaherty, Mayor of the City of Bartlett, 6400 Stage Road, Bartlett, Tennessee 38134.	September 25, 1998.	470175 E
Shelby (FEMA Docket No. 7273).	Unincorporated Areas.	October 2, 1998, October 9, 1998, *The Commercial Appeal*.	Mr. Jim Kelley, Shelby County Chief Officer, 160 North Main Street, Suite 850, Memphis, Tennessee 38103.	September 25, 1998.	470214 E
Ohio:					
Franklin (FEMA Docket No. 7273).	City of Grove City.	October 7, 1998, October 14, 1998, *Grove City Record*.	The Honorable Cheryl L. Grossman, Mayor of the City of Grove City, P.O. Box 427, Grove City, Ohio 43123–0427.	September 28, 1998.	390173 G
Lorain (FEMA Docket No. 7273).	City of Avon	October 14, 1998, October 21, 1998, *The Morning Journal*.	The Honorable James A. Smith, Mayor of the City of Avon, 36080 Chester Road, Avon, Ohio 44011–1588.	October 6, 1998	390348 C
Florida: Broward (FEMA Docket No. 7273).	City of Pompano Beach.	May 22, 1998, May 29, 1998, *Sun-Sentinel*.	The Honorable William F. Griffin, Mayor of the City of Pompano Beach, P.O. Drawer 1300, 100 West Atlantic Boulevard, Pompano Beach, Florida 33060.	April 24, 1998 ..	120055 F
Maine: Knox (FEMA Docket No. 7273).	Town of South Thomaston.	May 21, 1998, May 28, 1998, *The Courier Gazette*.	Mr. John Spear, First Selectman, Town of South Thomaston, P.O. Box 147, South Thomaston, Maine 04858.	May 13, 1998 ..	230078 B
Minnesota:					

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Hennepin (FEMA Docket No. 7273).	City of Maple Grove.	March 25, 1998, April 1, 1998, *Osseo-Maple Grove Press*.	The Honorable Robert A. Burlingame, Mayor of the City of Maple Grove, P.O. Box 1180, 9401 Fernbrook Lane, Maple Grove, Minnesota 55311–6180.	March 18, 1998	270169 B
Olmsted (FEMA Docket No. 7273).	Unincorporated Areas.	March 6, 1998, March 13, 1998, *Post Bulletin*.	Mr. Richard Devlin, Olmsted County Administrator, 151 4th Street, S.E., Rochester, Minnesota 55904.	February 27, 1998.	270626 D
Ohio: Lorain (FEMA Docket No. 7273).	City of North Ridgeville.	March 18, 1998, March 25, 1998, *The Press & Light*.	The Honorable Deanna C. Hill, Mayor of the City of North Ridgeville, 7307 Avon Belden Road, North Ridgeville, Ohio 44039.	March 9, 1998	390352 C
Minnesota: Olmsted (FEMA Docket No. 7273).	City of Rochester.	March 6, 1998, March 13, 1998, *Post-Bulletin*.	The Honorable Chuck Caufield, Mayor of the City of Rochester, 201 4th Street, S.E., Rochester, Minnesota 55904–3782.	February 27, 1998.	275246
New Jersey: Hunterdon (FEMA Docket No. 7273).	Township of Tewksbury.	March 12, 1998, March 19, 1998, *Hunterdon County Democrat*.	Mr. Ralph E. Blakeslee, III, Township Administrator for the Township of Tewksbury, 169 Old Turnpike Road, Califon, New Jersey 07830.	June 17, 1998	340516 B
Illinois: Cook and Lake (FEMA Docket No. 7273).	Village of Barrington.	September 10, 1998, September 17, 1998, *Barrington Courier-Review*.	Mr. Ronald Hamelberg, Village of Barrington President, 206 South Hough Street, Barrington, Illinois 60010.	December 16, 1998.	170057 F

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–5767 Filed 3–8–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California: San Diego (FEMA Docket No. 7260).	City of San Diego	September 23, 1998, September 30, 1998 *San Diego Union-Tribune.*	The Honorable Susan Golding, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, California 92101.	August 24, 1998	060295
Colorado: Jefferson (FEMA Docket No. 7260).	City of Lakewood	October 15, 1998, October 22, 1998, *Jefferson Sentinel.*	The Honorable Linda Morton, Mayor, City of Lakewood, 445 South Allison Parkway, Lakewood, Colorado 80226–3105.	September 24, 1998 ..	085075
Iowa:					
Polk (FEMA Docket No. 7260).	City of Des Moines.	October 16, 1998, October 23, 1998, *Des Moines Register.*	The Honorable Preston A. Daniels, Mayor, City of Des Moines, 400 East First Street, Des Moines, Iowa 50309.	January 21, 1999	190227
Polk (FEMA Docket No. 7260).	City of West Des Moines.	October 16, 1998, October 23, 1998, *Western Express.*	The Honorable Gene Meyer, Mayor, City of West Des Moines, P.O. Box 65320, West Des Moines, Iowa 50265.	January 21, 1999	190231
Polk (FEMA Docket No. 7260).	City of Windsor Heights.	October 16, 1998, October 23, 1998, *Western Express.*	The Honorable Donald C. Steele, Mayor, City of Windsor Heights, 1133 66th Street, Windsor Heights, Iowa 50311.	January 21, 1999	190687
Kansas:					
Kingman (FEMA Docket No. 7260).	City of Kingman ..	September 25, 1998, October 2, 1998, *Kingman Leader Courier.*	The Honorable Jack D. Ford, Mayor, City of Kingman, P.O. Box 168, Kingman, Kansas 67068.	December 31, 1998 ...	200183
Johnson (FEMA Docket No. 7260).	City of Lenexa	October 2, 1998, October 9, 1998, *Olathe Daily News.*	The Honorable Joan Bowman, Mayor, City of Lenexa, City Hall, 12350 West 87th Street Parkway, Lenexa, Kansas 66215.	September 2, 1998 ...	200168
Johnson (FEMA Docket No. 7260).	City of Olathe	September 23, 1998, September 30, 1998, *Olathe Daily News.*	The Honorable Larry L. Campbell, Mayor, City of Olathe, P.O. Box 768, Olathe, Kansas 66051–0768.	August 24, 1998	200173
New Mexico: Bernalillo, (FEMA Docket No. 7260).	City of Albuquerque.	October 8, 1998, October 15, 1998, *Albuquerque Journal.*	The Honorable Jim Baca, Mayor, City of Albuquerque, P.O. Box 1293 Albuquerque, New Mexico 87103.	September 11, 1998	350002
Nevada: Clark (FEMA Docket No. 7260).	Unincorporated Areas.	September 23, 1998, September 30, 1998, *Las Vegas Review Journal.*	The Honorable Yvonne Atkinson Gates, Chairperson, Clark County Board of Supervisors, 500 Grand Central Parkway, Las Vegas, Nevada 89155.	August 28, 1998	320003
Texas:					
Bexar (FEMA Docket No. 7260).	City of Alamo Heights.	October 8, 1998, October 15, 1998, *North San Antonio Times.*	The Honorable Robert Biechlin, Mayor, City of Alamo Heights, 6116 Broadway, San Antonio, Texas 78209.	January 13, 1999	480036

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Denton (FEMA Docket No. 7260).	City of Denton	September 23, 1998, September 30, 1998, *Denton Record Chronicle.*	The Honorable Jack Miller, Mayor, City of Denton, 215 East McKinney Street, Denton, Texas 76201.	August 24, 1998	480194
Washington: Grays Harbor (FEMA Docket No. 7260).	City of Cosmopolis.	October 15, 1998, October 22, 1998, *Montesano Vidette.*	The Honorable Jerry Raines, Mayor, City of Cosmopolis, P.O. Box G, Cosmopolis, Washington 98537.	September 3, 1998 ...	530059

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: March 2, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–5766 Filed 3–8–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7276]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director for Mitigation reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The change in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis had been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements. Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.14 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Pima	Unincorporated Areas.	January 13, 1999, January 20, 1999, The Arizona Daily Star.	The Honorable Mike Boyd, Chairperson, Pima County, Board of Supervisors, 130 West Congress, Fifth Floor, Tucson, Arizona 85701.	December 28, 1998.	040073
Pima	Unincorporated Areas.	January 20, 1999, January 27, 1999, Arizona Daily Star.	The Honorable Mike Boyd, Chairperson, Pima County, Board of Supervisors, 130 West Congress, Fifth Floor, Tucson, Arizona 85701.	January 5, 1999	040073
Arkansas:					
Washington	City of Fayetteville	January 8, 1999, January 15, 1999, Morning News.	The Honorable Fred Hanna, Mayor, City of Fayetteville, 113 West Mountain, Fayetteville, Arkansas 72701.	December 17, 1998.	050216
Crittenden	City of West Memphis.	January 12, 1999, January 19, 1999, Evening Times.	The Honorable Ward L. Wimbish, Public Works Director/Floodplain Manager, P.O. Box 1728, West Memphis, Arkansas 72303.	December 18, 1998.	050055
California: Ventura	Unincorporated Areas.	January 8, 1999, January 15, 1999, Ventura County Star.	The Honorable Judy Mikels, Chairperson, County of Ventura, 3855–F Alamo Street, Simi Valley, California 93063.	December 23, 1998.	060413
Iowa:					
Johnson	City of Coralville	January 13, 1999, January 20, 1999, Iowa City Press-Citizen.	The Honorable Jim Fausett, Mayor, City of Coralville, 814 14th Avenue, Coralville, Iowa 52241.	December 18, 1998.	190169
Johnson	City of Iowa City	January 13, 1999, January 20, 1999, Iowa City Press-Citizen.	The Honorable Ernie Lehman, Mayor, City of Iowa City, 410 East Washington Street, Iowa City, Iowa 52240.	December 18, 1998.	190171
Kansas: Sedgwick	City of Wichita	January 19, 1999, January 26, 1999, Wichita Eagle.	The Honorable Bob Knight, Mayor, City of Wichita, City Hall, 455 North Main Street, Wichita, Kansas 67202.	January 7, 1999	200328
Missouri: St. Louis.	City of Eureka	January 6, 1999, January 13, 1999, Tri-County Journal.	The Honorable Robert A. Berry, Mayor, City of Eureka, P.O. Box 125, Eureka, Missouri 63025.	April 13, 1999	290349
Oregon:					
Marion	Unincorporated Areas.	January 22, 1999, January 29, 1999, Statesman Journal.	The Honorable Randy Franke, Chairman, Marion County, Board of Commissioners, County Courthouse, 100 High Street, Northeast, Salem, Oregon 97301.	December 22, 1998.	410154
Marion	City of Salem	January 22, 1999, January 29, 1999, Statesman Journal.	The Honorable Michael Swaim, Mayor, City of Salem, 555 Liberty Street, Room 220, Salem, Oregon 97301.	December 22, 1998.	410167
Texas:					
Dallas	City of Dallas	January 13, 1999, January 20, 1999, Dallas Morning News.	The Honorable Ron Kirk, Mayor, City of Dallas, City Hall, 1500 Marilla, Dallas, Texas 75201.	December 11, 1998.	480171
El Paso	City of El Paso	January 12, 1999, January 19, 1999, El Paso Times.	The Honorable Carlos M. Ramirez, Mayor, City of El Paso, Two Civic Center Plaza, El Paso, Texas 79901–1196.	December 21, 1998.	480214
Tarrant	City of Fort Worth	January 12, 1999, January 19, 1999, Fort Worth Star-Telegram.	The Honorable Kenneth Barr, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102–6311.	December 14, 1998.	480596
Bexar	City of San Antonio.	January 22, 1999, January 29, 1999, San Antonio Express-News.	The Honorable Howard Peak, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283–3966.	December 21, 1998.	480045
Washington:					
Grays Harbor	Unincorporated Areas.	January 22, 1999, January 29, 1999, Aberdeen Daily World.	The Honorable Dick Dickson, Chairman, Board of Commissioners, Grays Harbor County, 100 West Broadway, Suite 1, Montesano, Washington 98563.	January 6, 1999	530057
Walla Walla	City of Waitsburg	January 7, 1999, January 14, 1999, Waitsburg Times.	The Honorable Bill Zuger, Mayor, City of Waitsburg, P.O. Box 35, Waitsburg, Washington 99361.	December 8, 1998	530196

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Walla Walla ...	Unincorporated Areas.	January 7, 1999, January 14, 1999, Walla Walla Union-Bulletin.	The Honorable Charles Maiden, Chairman, Walla Walla County, Board of Commissioners, P.O. Box 1506, Walla Walla, Washington 99362.	December 8, 1998	530194

(Catalog of Federal Domestic Assistance No. 83.100, ''Food Insurance'')

Dated: February 26, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–5765 Filed 3–8–99; 8:45 am]

BILLING CODE 6718–04–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act.

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act.

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification.

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism.

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform.

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
MINNESOTA	
Blue Earth County (Unincorporated Areas) (FEMA Docket No. 7267)	
Minnesota River:	
Approximately 1.25 miles downstream of downstream county boundary	*769
Approximately 3.7 miles upstream of confluence of Minneopa Creek	*787
Blue Earth River:	
At Mankato corporate limits ..	*785
Approximately 1.06 miles upstream of U.S. Highway 169	*785

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Blue Earth County Government Center, 410 South Fifth Street, Mankato, Minnesota.	
Courtland (City), Nicollet County (FEMA Docket No. 7267)	
Minnesota River:	
At the downstream corporate limits	*800
At the upstream corporate limits	*804
Maps available for inspection at the Courtland City Recreation Hall, Council Chambers/Clerks Office, 300 Railroad Street, Courtland, Minnesota.	
Kasota (City), Le Sueur County (FEMA Docket No. 7267)	
Minnesota River:	
Approximately 325 feet downstream of confluence of Shanaska Creek	*764
Approximately 1,800 feet upstream of the confluence with the Minnesota River along Shanaska Creek	*764
Approximately 1.06 miles upstream of confluence of Shanaska Creek	*765
Maps available for inspection at the Kasota City Hall, 200 North Webster, Kasota, Minnesota.	
Le Sueur (City), Le Sueur County (FEMA Docket No. 7267)	
Minnesota River:	
Approximately 0.47 mile upstream of downstream corporate limits	*742
Upstream corporate limits	*748
Maps available for inspection at the Le Sueur City Hall, 203 South 2nd Street, Le Sueur, Minnesota.	
Le Sueur County (Unincorporated Areas) (FEMA Docket No. 7267)	
Minnesota River:	
At downstream county boundary	*740
Approximately 0.25 mile downstream from upstream county boundary	*770
White Water Creek:	
At upstream Waterville corporate limits	*1,013
Approximately 1,300 feet upstream from upstream Waterville corporate limits	*1,016
Maps available for inspection at the Le Sueur County Planning and Zoning Administration, Environmental Services Building, 88 South Park, Le Center, Minnesota.	
Nicollet County (Unincorporated Areas) (FEMA Docket No. 7267)	
Minnesota River:	
At the downstream county boundary	*748
Approximately 0.20 mile upstream of the Chicago & North Western Railroad	*807
Maps available for inspection at the Nicollet County Courthouse, 501 South Minnesota Avenue, St. Peter, Minnesota.	
North Mankato (City), Nicollet County (FEMA Docket No. 7267)	
Minnesota River:	
Approximately 0.9 mile upstream of U.S. Highway 14	*777
Approximately 2 miles upstream of U.S. Highway 169	*786
Maps available for inspection at the North Mankato City Hall, 1001 Belgrade Avenue, North Mankato, Minnesota.	
St. Peter (City), Nicollet County (FEMA Docket No. 7267)	
Minnesota River:	
Approximately 1,500 feet downstream of State Highway 99	*759
At the upstream corporate limits	*765
Maps available for inspection at the City of St. Peter Public Works Department, St. Julian Street, St. Peter, Minnesota.	
MISSISSIPPI	
Jackson (City), Hinds, Rankin, and Madison Counties (FEMA Docket No. 7267)	
White Oak Creek:	
Approximately 739 feet upstream of Old Canton Road	*284
Approximately 230 feet upstream of Illinois Central Railroad	*313
Maps available for inspection at the Department of Public Works, 200 South President Street, Jackson, Mississippi.	
PENNSYLVANIA	
Bensalem (Township), Bucks County (FEMA Docket No. 7255)	
Neshaminy Creek:	
Approximately 200 feet downstream of Old Lincoln Highway	*49
Just downstream of Old Lincoln Highway	*49
Maps available for inspection at the Bensalem Township Building, Office of Building and Planning, 2400 Byberry Road, Bensalem, Pennsylvania.	
Middletown (Township), Bucks County (FEMA Docket No. 7255)	
Chub Run:	
At upstream side of Gillam Avenue	*196
Approximately 90 feet upstream of Gillam Avenue	*196
Neshaminy Creek:	
At downstream corporate limits	*23
At upstream corporate limits	*86
Queen Anne Creek:	
Approximately 750 feet downstream of Oxford Valley Road	*71
Approximately 650 feet downstream of Oxford Valley Road	*71
Maps available for inspection at the Middletown Township Hall, 2140 Trenton Road, Levittown, Pennsylvania.	
Perkasie (Borough), Bucks County (FEMA Docket No. 7255)	
East Branch Perkiomen Creek:	
Downstream corporate limit	*308
Approximately 1,300 feet upstream of East Callowhill Road	*31
Maps available for inspection at the Perkasie Borough Hall, 311 South Ninth Street, Perkasie, Pennsylvania	
TENNESSEE	
Gordonsville (Town), Smith County (FEMA Docket No. 7263)	
Caney Fork River:	
At the confluence of Mullherrin Creek	*489
Approximately 0.3 mile upstream of the confluence of Hickman Creek	*493
Mullherrin Creek:	
Approximately 25 feet upstream of Southern Railway	*489
Approximately 1,100 feet upstream of State Route 53/ Carthage Road	*490
Hickman Creek:	
At the confluence with Caney Fork River	*492
Approximately 1.2 miles upstream of Southern Railway	*493
Maps available for inspection at the Gordonsville City Hall, 63 East Main Street, Gordonsville, Tennessee.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Smith County (Unincorporated Areas) (FEMA Docket No. 7263)	
Caney Fork River:	
At the confluence of Mulherrin Creek	*489
Approximately 0.53 mile upstream of the confluence of Hickman Creek	*493
Mulherrin Creek:	
Approximately 25 feet upstream of Southern Railway	*489
Approximately 1,250 feet upstream of State Route 53/ Carthage Road	*490
Hickman Creek:	
At the confluence with Caney Fork River	*492
Approximately 1.2 miles upstream of Southern Railway	*493
Maps available for inspection at the Smith County Executive's Office, 122 Turner High Circle, Carthage, Tennessee.	

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: March 2, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–5764 Filed 3–8–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Arkansas	
Washington County (and Incorporated Areas) (FEMA Docket No. 7262)	
Scull Creek:	
Approximately 250 feet upstream of confluence with Mud Creek	*1,179
Approximately 1,650 feet upstream of Sycamore Street	*1,294
Approximately 650 feet upstream of College Avenue	*1,399
Clabber Creek Tributary C–2:	
At confluence with Clabber Creek	*1,161
Approximately 2,200 feet upstream of confluence with Clabber Creek	*1,201
Hamestring Creek Tributary HS2:	
Approximately 200 feet upstream of confluence with Hamestring Creek	*1,192
Approximately 3,200 feet upstream of confluence with Hamestring Creek	*1,237
Clabber Creek Tributary C–1:	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 200 feet upstream of confluence with Clabber Creek	*1,160
Approximately 1,200 feet upstream of confluence with Tributary C1–A	*1,203
Clabber Creek Tributary C1–A:	
Approximately 100 feet upstream of confluence of Clabber Creek Tributary C1	*1,173
Approximately 540 feet upstream of County Road 707	*1,203
Middle Fork Hamestring Creek:	
Approximately 200 feet upstream of confluence with Hamestring Creek	*1,220
Approximately 100 feet upstream of Porter House Road	*1,247
North Fork Hamestring Creek:	
Approximately 20 feet upstream of confluence with Hamestring Creek	*1,209
Approximately 500 feet upstream of Route 71	*1,256
Clabber Creek:	
Approximately 20 feet upstream of confluence with Hamestring Creek	*1,144
Approximately 1,250 feet downstream of Thuckers Drive	*1,197
Approximately 100 feet upstream of Highway 71	*1,223
South Fork Hamestring Creek:	
Just above confluence with Hamestring Creek	*1,237
Approximately 2,300 feet upstream of Highway 71	*1,273
Town Branch:	
Approximately 1,250 feet downstream of Armstrong Avenue	*1,189
Approximately 2,000 feet upstream of Highway 71	*1,273
Owl Creek Tributary 2:	
At confluence with Owl Creek	*1,230
Approximately 3,000 feet upstream of confluence with Owl Creek	*1,252
Owl Creek Tributary 1:	
At confluence with Owl Creek	*1,227
Approximately 3,100 feet upstream of confluence with Owl Creek	*1,242
Hamestring Creek:	
Approximately 200 feet downstream of County Road 881	*1,118
Approximately 1,500 feet upstream of Wedington Drive	*1,250
Scull Creek Tributary 2:	
At confluence with Scull Creek	*1,214
Approximately 1,000 feet upstream of confluence with Scull Creek	*1,225
Sublet Creek:	
At confluence with Scull Creek	*1,232
Approximately 1,750 feet upstream of Sycamore Street	*1,383
Scull Creek Tributary 1:	
At confluence with Scull Creek	*1,195
Approximately 1,200 feet upstream of Futrail Drive	*1,228
Hamestring Creek Tributary HS3:	
At confluence with Hamestring Creek	*1,236
Approximately 125 feet upstream of Mount Comfort Road	*1,260
Hamestring Creek Tributary HS1:	
Approximately 600 feet downstream of County Road 882	*1,126
Approximately 220 feet upstream of Double Tree Drive	*1,223
Cato Springs Branch:	
At confluence with Town Branch	*1,221
Approximately 2,500 feet upstream of Arkansas and Missouri Railroad	*1,252
Owl Creek:	
Approximately 700 feet downstream of Double Springs Road (CR 27)	*1,173
Approximately 2,100 feet upstream of Rupple Road	*1,247
Mud Creek Tributary:	
At confluence with Mud Creek	*1,226
Approximately 1,500 feet upstream of Azalea Drive	*1,316
Approximately 2,400 feet upstream of Sycamore Street	*1,443
Maps are available for inspection at the Washington County Planning Office, Four South College Avenue, Suite 205, Fayetteville, Arkansas.	
Maps are available for inspection at 113 West Mountain, Fayetteville, Arkansas.	
Maps are available for inspection at 2904 Main Drive, Johnson, Arkansas.	
LOUISIANA	
Hammond (City), Tangipahoa Parish (FEMA Docket No. 7262)	
Ponchatoula Creek:	
Upstream of Illinois Central Gulf Railroad bridge	*45
Approximately 4,000 feet upstream of Yellow Water Diversion Canal	*46
Maps are available for inspection at the City of Hammond City Hall, 310 East Charles, Hammond, Louisiana.	
Ponchatoula (City), Tangipahoa Parish (FEMA Docket No. 7262)	
Ponchatoula Creek:	
At U.S. Highway 51	*17
Approximately 6,200 feet upstream of U.S. Highway 51 bridge	*21
Maps are available for inspection at 125 West Hickory, Ponchatoula, Louisiana.	
TEXAS	
Caldwell County (Unincorporated Areas) (FEMA Docket No. 7246)	
San Marcos River:	
At confluence of Plum Creek	*341
Just upstream of U.S. Highway 10	*355
Just upstream of U.S. Highway 90	*379
Just upstream of State Highway 671	*409
Just upstream of State Highway 20	*442
Just upstream of Farm-to-Market Road 1977	*485
Just upstream of County Road 21	*564
Bypass Creek:	
At confluence with San Marcos River	*553
Approximately 150 feet upstream of Camp Gary Access Road	*577
Martindale Diversion:	
Approximately 2.8 miles downstream of Farm-to-Market Road 1979 at the convergence with San Marcos River	*500
Just downstream of Farm-to-Market Road 1979 at the divergence from San Marcos River	*522
Brushy Creek:	
Approximately 1 mile downstream of Highway 21	*539
Just upstream of Highway 21 at the northwest county boundary	*542
Maps are available for inspection at the Caldwell County Courthouse, Main and San Antonio Streets, Lockhart, Texas.	
Victoria (City), Victoria County (FEMA Docket No. 7262)	
Whispering Creek:	
Just upstream of John Stockbauer Drive	*108
Just downstream of Loop 463	*114
Approximately 3,640 feet upstream of Loop 463	*118
Maps are available for inspection at the City of Victoria City Hall, 700 Main Center, Suite 115, Victoria, Texas.	

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: March 2, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–5763 Filed 3–8–99; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 111798A]

RIN 0648–AL89

Fisheries of the Exclusive Economic Zone Off Alaska; Revision of Definitions of Overfishing, Maximum Sustainable Yield, and Optimum Yield for the Crab and Scallop Fisheries

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

ACTION: Approval of fishery management plan amendments.

SUMMARY: NMFS announces the approval of Amendment 7 to the Fishery Management Plan (FMP) for the Commercial King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands (BSAI crab FMP) and Amendment 6 to the FMP for the Scallop Fishery Off Alaska (scallop FMP). These amendments revise definitions of overfishing, maximum sustainable yield (MSY), and optimum yield (OY) for the crab and scallop fisheries. These actions are necessary to ensure that conservation and management measures continue to be based on the best scientific information available and are intended to advance the Council's ability to achieve, on a continuing basis, the OY from fisheries under its geographical area of authority.

DATES: The amendments were approved on March 3, 1999.

ADDRESSES: Copies of Amendment 7 to the BSAI crab FMP, Amendment 6 to the scallop FMP, and the Environmental Assessment (EA) prepared for each amendment are available from the North Pacific Fishery Management Council, 605 West 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington, 907-586-7228 or gretchen.harrington@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

National standard 1 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from fisheries in Federal waters. The Magnuson-Stevens Act, in section 303(a)(10), requires that each FMP specify objective and measurable criteria for identifying when stocks or stock complexes covered by an FMP are overfished and for rebuilding overfished stocks. NMFS published national standard guidelines (50 CFR part 600) to provide comprehensive guidance for the development of FMPs and FMP amendments that comply with the Magnuson-Stevens Act.

NMFS is required to notify a regional fishery management council once NMFS determines that overfishing is occurring, a stock or stock complex is overfished, a stock or stock complex is approaching its minimum stock size threshold (MSST), or the rate or level of fishing mortality for a stock or stock complex is approaching maximum fishing mortality threshold (MFMT). The regional fishery management council then must develop a rebuilding plan within 1 year.

In June 1998, the North Pacific Fishery Management Council (Council) took final action on amendments to bring the BSAI crab and scallop FMPs into compliance with the Magnuson-Stevens Act and the national standard guidelines (50 CFR part 600). Each of these amendments would redefine overfishing, MSY, and OY based on the biology of the stock, the fishing history, and the available scientific and fishery data.

A notice of availability for the proposed Amendment 7 to the BSAI crab FMP and proposed Amendment 6 to the scallop FMP, which described the proposed amendments and invited comments from the public, was published in the **Federal Register** on December 1, 1998 (63 FR 66112). Comments were invited until February 1, 1999. NMFS received two letters of no comment, one from the U.S. Coast Guard and one from the U.S. Department of State.

Bering Sea/Aleutian Islands King and Tanner Crabs

Amendment 7 to the BSAI crab FMP improves management of the BSAI crab fisheries by: (1) Preventing overfishing; (2) achieving OY on a continuing basis; and (3) updating the crab FMP with new information. Amendment 7 establishes criteria for estimating OY and overfishing levels for BSAI crab stocks. These criteria were developed by the BSAI Crab Plan Team based on species life history characteristics and trends in stock biomass estimates. The OY, MSY, and threshold levels in Amendment 7 are based on the Magnuson-Stevens Act and the national standard guidelines.

Currently, the Bering Sea *C. bairdi* Tanner crab spawning biomass is below the MSST, and is deemed ''overfished,'' under Amendment 7. The Council is required to develop a rebuilding plan for this stock within 1 year.

Update the BSAI Crab FMP

The 1989 BSAI Crab FMP does not provide the reader with a clear understanding of conservation and management measures that have been implemented for the BSAI crab fisheries. The updated version of the FMP incorporates: Six FMP amendments; catch data and other scientific information from the past 10 years; and changes due to amendments to the Magnuson-Stevens Act and other laws, a Russian/U.S. boundary agreement, and a Federal/State Action Plan.

Scallops

Amendment 6 to the scallop FMP improves management of the scallop fisheries by: (1) Preventing overfishing; (2) achieving OY on a continuing basis; and (3) minimizing bycatch. Amendment 6 will amend the scallop FMP by redefining overfishing, OY, and MSY, to bring the FMP into compliance with the Magnuson-Stevens Act.

This amendment also adds information to the FMP on State of Alaska bycatch monitoring and reduction programs. The Magnuson-Stevens Act national standard 9 emphasizes the importance of minimizing bycatch effects. Accordingly, Amendment 6 to the scallop FMP identifies implemented bycatch reduction and monitoring measures: at-sea catch sampling, area closures, bycatch limits, and gear restrictions.

The Council prepared an EA for each amendment that describes the management background, the purpose and need for the action, the management action alternatives, and the environmental and socio-economic impacts of the alternatives. A copy of each EA can be obtained from the Council (see **ADDRESSES**).

The Director, Alaska Fisheries Science Center, NMFS, certified with reservations that the definitions of overfishing for the crab and scallop fisheries comply with the provisions of the national standard guidelines at 50 CFR 600.310(d)(5). These guidelines require that overfishing definitions (1) have sufficient scientific merit, (2) are likely to result in effective Council action to protect the stock from closely approaching or reaching an overfished status, (3) provide a basis for objective measurement of the status of the stock against the criteria, and (4) are operationally feasible. The crab and scallop overfishing definitions satisfy

criteria (1), (3), and (4). However, insufficient information exists to determine if the overfishing definitions satisfy criterion (2). Data currently available for species covered by these FMPs are inadequate to determine if the selected MSSTs are greater than the minimum stock size at which rebuilding to the MSY level would be expected to occur within 10 years if the stock or stock complex were exploited at the MFMT.

NMFS determined that Amendment 7 to the BSAI crab FMP and Amendment 6 to the scallop FMP are consistent with the Magnuson-Stevens Act and other applicable laws and approved Amendments 7 and 6 on March 3, 1999. Additional information on this action is contained in the December 1, 1998, Notice of Availability (63 FR 66112).

No regulatory changes are necessary to implement these FMP amendments.

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

Dated: March 3, 1999.

Gary C. Matlock,

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

[FR Doc. 99–5797 Filed 3–8–99; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 45
Tuesday, March 9, 1999

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

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 96–016–34]

RIN 0579–AA83

Karnal Bunt; Reclassification of Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Karnal bunt regulations by removing the current restricted and surveillance area categories of regulated areas and replacing them with a single classification. As part of this proposed change in the regulations, we would release from regulation most of the areas currently designated as restricted areas for seed; remove the prohibition on planting wheat, durum wheat, and triticale in fields associated with Karnal bunt; and remove the cleaning requirement for vegetables grown in those fields. Removing those areas currently designated as restricted areas for seed from the regulations would greatly reduce the total area in the southwestern United States that is regulated for Karnal bunt, and removing the planting prohibition and the vegetable cleaning requirement would ease restrictions on field owners in the regulated areas. We are also proposing to amend the list of regulated areas to add several fields or areas in three Arizona counties to the list of regulated areas. These proposed additions to the list of regulated areas are necessary due to the detection of bunted kernels in fields in those counties during 1998.

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

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96–016–34, 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. 96–016–34. 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: Mr. Stephen Poe, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; telephone (301) 734–8899; fax 301–734–8584; e-mail: Stephen.R.Poe@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*), a hybrid of wheat and rye. Karnal bunt is caused by the smut fungus *Tilletia indica* (Mitra) Mundkur and is spread by spores, primarily through the movement of infected seed. In the absence of measures taken by the U.S. Department of Agriculture (USDA) to prevent its spread, the establishment of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets. The regulations regarding Karnal bunt in the United States are set forth in ''Subpart—Karnal Bunt'' (7 CFR 301.89–1 through 301.89–14, referred to below as the regulations).

The regulations in § 301.89–3(e) currently provide three classification categories for fields or areas within an area regulated for Karnal bunt. Those categories are:

- *Restricted areas for seed.* A restricted area for seed is a distinct definable area that includes at least one field that has been (1) found during survey to contain a bunted wheat kernel, (2) planted with seed from a lot found to contain a bunted wheat kernel, or (3) found during survey to contain spores consistent with Karnal bunt and determined to be associated with grain at a handling facility containing a bunted wheat kernel.
- *Restricted areas for regulated articles other than seed.* Individual fields are designated as restricted areas for regulated articles other than seed under the following circumstances: (1) The field was found during survey to contain a bunted wheat kernel, (2) the field was planted with seed from a lot found to contain a bunted wheat kernel, or (3) the field was found during survey to contain spores consistent with Karnal bunt and has been determined to be associated with grain at a handling facility containing a bunted wheat kernel.
- *Surveillance areas.* A surveillance area is a distinct definable area where Karnal bunt is not known to exist but where intensive surveys are required because of the area's proximity to a field found during survey to contain a bunted kernel or because of its association with grain at a handling facility containing a bunted kernel.

For the purposes of the production and movement of wheat, durum wheat, and triticale, the regulatory restrictions that currently apply to each category vary. Wheat, durum wheat, and triticale may not be planted in a restricted area for regulated articles other than seed. Those crops may be grown in a surveillance area and moved out of the regulated area as grain with a certificate if tested and found free from Karnal bunt or with a limited permit if bunted kernels are detected during testing. Commercial lots of wheat, durum wheat, or triticale seed grown in a surveillance area may not be moved out of the regulated area. Finally, wheat, durum wheat, and triticale may be grown as grain or seed in a restricted area for seed; grain grown in a restricted area for seed may be moved from the regulated area without restriction, and seed grown in a restricted area for seed may be moved from the regulated area if it meets certain eligibility criteria and has been tested and treated.

In this document, we are proposing to amend the regulations by simplifying the classification criteria for regulated articles; removing the prohibition on planting wheat, durum wheat, and triticale in fields associated with Karnal bunt; and modifying the descriptions of the regulated areas in Arizona, California, New Mexico, and Texas to reflect the elimination of the restricted area for seed classification and to add new areas of Arizona in which bunted kernels were detected during sampling conducted in 1998. We are also

proposing to remove the requirement for cleaning soil and plant debris from vegetable crops grown in fields associated with Karnal bunt. These proposed changes are discussed below.

Reclassification of Regulated Areas

As discussed above, the current regulations provide for fields and areas to be classified as restricted areas for seed, restricted areas for regulated articles other than seed, and surveillance areas. In this document we are proposing to remove those three categories and replace them with a single classification, ''regulated area.'' The proposed new regulated area classification would be the same as the current surveillance area classification in most respects, both in terms of the areas under regulation and the requirements for the production and movement of regulated articles. In those instances where there are individual fields listed in the regulations and those fields are not surrounded by surveillance areas—this is the case in New Mexico, western Texas (El Paso and Hudspeth Counties), and parts of Arizona (all of Yuma County and limited areas of Maricopa and Pinal Counties)—those individual fields would themselves be designated as regulated areas.

The proposed elimination of the restricted area for seed classification would mean, in almost all cases, that only those areas currently designated as surveillance areas or restricted areas for regulated articles other than seed would remain under regulation. (The exceptions would be found in La Paz, Maricopa, and Pinal Counties, AZ, where the proposed new regulated areas would include some areas currently designated as restricted areas for seed in order to reflect the detection of bunted kernels in new fields during 1998.) We are proposing to eliminate the restricted area for seed classification, along with the testing and treatment requirements that currently apply to commercial seed grown in those areas, because the data we have accumulated during the last 3 years of surveys indicates that Karnal bunt is not present in the restricted areas for seed. Given that apparent freedom from Karnal bunt, we do not believe that it is necessary to continue placing restrictions on the movement of seed from those areas currently designated as restricted areas for seed.

We are proposing to revise § 301.89–3(e) to remove the classification criteria for the three current restricted and surveillance area categories and replace them with criteria for classifying regulated areas. Under these proposed criteria, a field or area would be classified as a regulated area when:

- It is a field planted with seed from a lot found to contain a bunted wheat kernel; or
- It is a distinct definable area that contains at least one field that was found during survey to contain a bunted wheat kernel (the distinct definable area may include an area where Karnal bunt is not known to exist but where intensive surveys are required because of the area's proximity to a field found during survey to contain a bunted kernel); or
- It is a distinct definable area that contains at least one field that was found during survey to contain spores consistent with Karnal bunt and has been determined to be associated with grain at a handling facility containing a bunted wheat kernel (the distinct definable area may include an area where Karnal bunt is not known to exist but where intensive surveys are required because of the area's proximity to a field that has been associated with grain at a handling facility containing a bunted kernel).

These proposed criteria combine some aspects of the three sets of criteria currently used to classify restricted and surveillance areas. As under the existing classification criteria, it is the link between a field and bunted kernels that would lead to a field or area being classified as a regulated area. That link is established when: (1) A field has been determined to have been planted with seed from a lot found to contain a bunted wheat kernel, (2) when the field was found during survey to contain a bunted kernel, or (3) when the field was found during survey to contain spores and the grain from that field has been associated with grain at a handling facility found to contain bunted kernels.

In the first instance, it has only been established that a field was planted with seed from a lot found to contain bunted kernels; it has not been established that Karnal bunt is present in the field because no bunted kernels have been found in wheat grown in that field. For that reason, the proposed classification criteria, like the existing classification criteria, do not provide for buffer or surveillance areas to be established around the fields planted with seed from a lot containing bunted kernels.

However, in the latter two instances, it has been determined that Karnal bunt is present in a field or that there is the very high likelihood that Karnal bunt is present in a field. (These are the fields that were found to contain bunted kernels or that were found to contain spores and were associated with grain in a handling facility found to contain bunted kernels.) Given the high degree of certainty regarding the presence of Karnal bunt in those fields, we believe that there is a higher risk that Karnal bunt might be spread from the fields through natural or artificial means. Therefore, the proposed classification criteria, like the existing classification criteria, provide for the fields to be surrounded by buffer areas—i.e., distinct definable areas—that are sufficient to ensure that the appropriate testing and cleaning measures are applied to regulated articles before they are moved out of the regulated area in order to minimize the risk that they will artificially spread Karnal bunt. As is the case under the current regulations, the boundaries of the distinct definable area would be determined using the criteria in paragraphs (b) through (d) of § 301.89–3, which provide for regulating less than an entire State, the inclusion of noninfected acreage in a regulated area, and the temporary designation of nonregulated areas as regulated areas.

The requirements that would apply to the movement of grain grown in a regulated area would be the same as the requirements that are currently found in § 301.89–6(b) regarding the movement of grain grown in a surveillance area. Specifically, to be eligible for unrestricted movement under a certificate, grain from a field within a regulated area would have to be tested and found free from bunted kernels prior to its movement from the field or before it was commingled with other grain. If bunted kernels were found, the grain would be eligible for movement only under a limited permit issued in accordance with § 301.89–6(c), which requires that the grain be moved to a specified destination for specified handling, utilization, or processing that will destroy the Karnal bunt or mitigate the risk of its spread. The requirements that would apply to the movement of wheat, durum wheat, and triticale grown as seed within a regulated area would also be the same as the requirements that apply to the movement of seed grown in a surveillance area, i.e., only seed used for research or germplasm purposes, and not commercial lots of seed, would be eligible for movement from the regulated area. These requirements have proven adequate to prevent the dissemination of Karnal bunt through the movement of grain and seed grown in a surveillance area, and we believe that they would be similarly effective in preventing the spread of Karnal bunt through the movement of grain and seed grown in a regulated area.

Currently, § 301.89–4 prohibits the planting of wheat, durum wheat, and

triticale in fields that are designated as restricted areas for regulated articles other than seed. As part of our proposed removal of the restricted area for regulated articles other than seed classification, we are also proposing to remove that planting prohibition. We are proposing this change because we believe that the intended use of any wheat, durum wheat, and triticale grown in those currently restricted fields, plus the efficacy of the available Karnal bunt testing methods, would together serve to reduce the risk of grain grown in those fields spreading Karnal bunt outside the regulated areas. First, we recognize that it is the movement of contaminated seed that presents the greatest risk of spreading Karnal bunt. Because of that, all wheat, durum wheat, and triticale grown in a currently restricted field would be prohibited from being used as commercial seed outside the regulated area. As is the case currently for seed grown in a surveillance area, wheat, durum wheat, or triticale grown anywhere in the proposed new regulated area, including those currently restricted fields, could be used for seed outside the regulated area only as research or germplasm seed and only if it was treated in accordance with § 301.89–13(e) prior to its use. These limitations on the use of Karnal bunt host crops as seed mean the vast majority, if not all, of the wheat, durum wheat, and triticale grown in the proposed new regulated area, including those currently restricted fields, would be sold as grain. Second, all wheat, durum wheat, and triticale grown in the currently restricted fields would have to be tested and found free from bunted kernels prior to its movement from the field or before it was commingled with other grain to be eligible for unrestricted movement under a certificate. That required testing, which is currently required for Karnal bunt host crops grown in a surveillance area, has proven to be an effective means of detecting the presence of Karnal bunt. If bunted kernels were found, the grain would be eligible for movement only under a limited permit, which requires that the grain be moved to a specified destination for specified handling, utilization, or processing that will destroy the Karnal bunt or mitigate the risk of its spread. Taken together, we believe that these use limitations, testing requirements, and movement restrictions would be sufficient to prevent the spread of Karnal bunt from the previously restricted fields. We believe our proposed removal of the planting prohibition would allow the owners of those previously restricted fields to make their own planting decisions while continuing to protect against the spread of Karnal bunt from the regulated areas.

Regulated Areas

We are proposing to amend the list of regulated areas in § 301.89–3(f) to reflect the proposed removal of the restricted and surveillance area classifications and their replacement with a single regulated area classification. As discussed above, this proposed change in the regulations would result in the removal of large areas in Arizona, California, New Mexico, and Texas—those areas currently designated as restricted areas for seed—from the regulations. In Arizona, however, we would add new fields or areas as regulated areas in La Paz, Maricopa, and Pinal Counties as a result of the detection of bunted kernels in new fields during sampling conducted in 1998. The regulated areas would continue to be listed alphabetically by State, with regulated areas and fields within each State being listed by county. Where individual fields are listed, they would be designated by specific field numbers.

Arizona

Under the current regulations, all of La Paz County is designated as a restricted area for seed and four individual fields that had been found to contain bunted kernels are designated as restricted areas for regulated articles other than seed. Two portions of the county, each of which surrounds two of the four listed fields, are designated as surveillance areas.

Under this proposed rule, La Paz County would no longer be designated as a restricted area for seed. In addition, the four currently listed fields that fall within the surveillance areas described in the current regulations would no longer be individually listed in the regulations. Those four fields, along with three new fields in the northern surveillance area that were identified as containing bunted kernels during sampling conducted in 1998, would fall within the proposed new regulated areas in La Paz County, which are equivalent to the surveillance areas in the county described in the current regulations. The southern regulated area would remain the same as the surveillance area described in the current regulations, while the northern regulated area would be somewhat larger than its corresponding surveillance area due to the need to incorporate an appropriate buffer area around the three new fields in which bunted kernels were detected in 1998. The boundaries of the areas in La Paz County that would be designated as regulated areas are described in § 301.89–3(f) in the rule portion of this document.

Under the current regulations, all of Maricopa County is designated as a restricted area for seed and 83 individual fields that had been found to contain bunted kernels (17 of the 83 fields) or that were determined to have been planted with contaminated seed (the remaining 66 fields) are designated as restricted areas for regulated articles other than seed. Portions of the county surrounding the 17 fields that had been found to contain bunted kernels are designated as surveillance areas.

Under this proposed rule, Maricopa County would no longer be designated as a restricted area for seed. In addition, 53 of the currently listed fields would no longer be individually listed in the regulations. One of those fields (field no. 316131801) would be removed entirely because homes have been built on the land, so it is no longer agricultural acreage. The remaining 52 fields, along with 62 new fields that were identified as containing bunted kernels during sampling conducted in 1998, would fall within the proposed new regulated areas in Maricopa County. The regulated areas in Maricopa County would be roughly equivalent to the currently described surveillance areas in the county, although the proposed areas would be larger than their corresponding surveillance areas due to the need to incorporate appropriate buffer areas around the 62 new fields in which bunted kernels were detected in 1998. The remaining 30 currently listed fields that would not fall within the larger regulated areas would be individually designated as regulated areas under this proposed rule. Descriptions of the boundaries of the areas in Maricopa County that would be designated as regulated areas, along with a list of the 30 fields that would be designated as regulated areas, are found in § 301.89–3(f) in the rule portion of this document.

Under the current regulations, all of Pinal County is designated as a restricted area for seed and 10 individual fields that had been found to either contain bunted kernels (4 of the 10 fields) or were determined to have been planted with contaminated seed (the remaining 6 fields) are designated as restricted areas for regulated articles other than seed. A portion of the county surrounding the four fields that had been found to contain bunted kernels are designated as a surveillance area.

Under this proposed rule, Pinal County would no longer be designated

as a restricted area for seed. In addition, the four currently listed fields that fall within the surveillance area described in the current regulations would no longer be individually listed in the regulations. Those four fields, along with nine new fields that were identified as containing bunted kernels during sampling conducted in 1998, would fall within the proposed new regulated area in Pinal County, which is roughly equivalent to the currently described surveillance area in the county. The remaining 2 currently listed fields (field nos. 308102604 and 308102605), along with 13 new fields that would be added based on their association with a bunted kernel detected in a storage facility in Casa Grande, AZ, would be individually listed as regulated areas under this proposed rule.

Although those 13 fields were associated with a bunted kernel detected in a storage facility, they would be added as regulated areas without a surrounding buffer area. The storage facility in which the bunted kernel was found had been used in 1997 to store Karnal-bunt-positive grain, so the possibility was raised that the kernel was from the 1997 positive lot rather than the 1998 crop, even though the facility had been cleaned and treated with sodium hypochlorite after the 1997 crop was removed. Because the 1997 and 1998 lots were of different durum wheat varieties, we attempted to settle that question by submitting the bunted kernel to the Agricultural Research Service laboratory in Lincoln, NE, to confirm its variety. Although the bunted kernel showed a number of similarities to the 1998 variety, the results of the protein analysis did not allow us to conclusively determine the bunted kernel's variety. Without such a confirmation, and given the fact that other fields in the areas have previously been sampled and found free from Karnal bunt, there is some degree of uncertainty as to the Karnal bunt status of those fields. However, in the absence of negative survey data to the contrary, we cannot exclude the possibility that the bunted kernel may have come from one of the 13 fields. We believe, therefore, that it would be appropriate to designate the 13 fields individually as regulated areas without establishing surrounding buffer areas. This would allow us to address the potential risks associated with those fields by ensuring that Karnal bunt host crops grown in those fields would be tested for bunted kernels before they could be moved from the regulated area.

A description of the boundaries of the area in Pinal County that would be designated as a regulated area, along with a list of the 20 fields that would be designated as regulated areas, is contained in § 301.89–3(f) in the rule portion of this document.

Under the current regulations, all of Yuma County is designated as a restricted area for seed, and 26 fields that had been identified as having been planted with contaminated seed are listed as restricted areas for regulated articles other than seed. Because there were no fields found to contain bunted wheat kernels in Yuma County—only fields planted with contaminated seed—the current regulations contain no surveillance areas in Yuma County.

Under this proposed rule, Yuma County would no longer be designated as a restricted area for seed, which would leave the individual fields listed in the regulations as the only regulated areas within Yuma County. Although the proposed regulations list 40 fields rather than the 26 currently listed in the regulations, we are not proposing to place any new fields under regulatory restrictions. Rather, the increase is attributable to nine of the fields listed in the current regulations being subdivided by their owners into two or more fields in order to plant other crops. A list of the 40 fields in Yuma County that would be designated as regulated areas is contained in § 301.89–3(f) in the rule portion of this document.

California

Under the current regulations, the Bard-Winterhaven area of Imperial County, CA, is designated as a restricted area for seed. The area received that designation because it abuts Yuma County, AZ, and fell within a distinct definable wheat production area that included fields in Yuma County that were planted with contaminated seed. Because we are proposing to eliminate the restricted area for seed classification, and because the Bard-Winterhaven area did not include any restricted areas for regulated articles other than seed or surveillance areas, we are proposing to remove the Bard-Winterhaven area of Imperial County from the regulations.

The regulations in § 301.89–3(f) also currently list 55 fields in the Palo Verde Valley area of Riverside County, CA, as restricted areas for regulated articles other than seed based on the detection of spores in those fields and the fields' association with bunted kernels found in a storage facility. Based on the restricted status of those fields, surrounding portions of Imperial and Riverside Counties were designated as restricted areas for seed, and portions of those counties in closer proximity to the 55 fields were designated as surveillance areas.

Under this proposed rule, there would no longer be any restricted areas for seed in Imperial and Riverside Counties, and those portions of Imperial and Riverside Counties currently designated as surveillance areas would be redesignated as regulated areas. The proposed new regulated areas in Imperial and Riverside Counties would, however, be somewhat smaller than the current surveillance areas. This is because our Karnal bunt program staff and State cooperators in California have adjusted the boundaries to make them more accurate by removing nonagricultural acreage and areas outside the 3-mile buffer that has been generally used to establish surveillance areas. We would also remove the list of the 55 individual fields in Riverside County from the regulations because those fields, along with four new fields that were identified as containing bunted kernels during sampling conducted in 1998, all fall within the area described in the proposed new regulated area in Riverside County. The boundaries of the proposed regulated areas in Imperial and Riverside Counties are set forth in the description of regulated areas contained in § 301.89–3(f) in the rule portion of this document.

New Mexico

Under the current regulations, there are 106 fields in New Mexico listed as restricted areas for regulated articles other than seed: 39 in Dona Ana County, 2 in Hidalgo County, 31 in Luna County, and 34 in Sierra County. These fields were designated as restricted areas for regulated articles other than seed because they had been identified as having been planted with contaminated seed. A restricted area for seed surrounds the fields in each county. Because there were no fields found to contain bunted wheat kernels in New Mexico—only fields planted with contaminated seed—the current regulations contain no surveillance areas in the State.

Under this proposed rule, those same individual fields that were planted with contaminated seed would be designated as the regulated areas in New Mexico, and there would no longer be a restricted area for seed in New Mexico. Again, because there were no fields found to contain bunted kernels in New Mexico, we do not believe it would be necessary to designate any buffer areas around the fields designated as regulated areas, so those fields would be the only regulated areas within New Mexico. We have, however, modified the numbering convention used to

identify the individual fields in New Mexico in this proposed rule. These proposed new numerical designations, which were made possible as a result of more up-to-date mapping information, would allow us to number the fields in a manner consistent with the system used by our Karnal bunt program staff in Arizona and central Texas. Although the proposed regulations list 118 fields in New Mexico, as opposed to the 106 fields listed in the current regulations, we are not proposing to place any new fields under regulatory restrictions. Rather, the increase is attributable to three large fields in Dona Ana County and one large field in Luna County being subdivided under the new numbering system. The individual fields that would be the regulated areas in New Mexico are listed in the description of regulated areas contained in § 301.89–3(f) in the rule portion of this document.

Texas

The regulations in § 301.89–3(f) currently describe restricted areas for seed in 5 Texas counties (El Paso, Hudspeth, McCulloch, Mills, and San Saba), 42 fields designated as restricted areas for regulated articles other than seed in 3 counties (20 in El Paso, 4 in Hudspeth, and 18 in San Saba), and surveillance areas in 3 counties (McCulloch, Mills, and San Saba).

In El Paso and Hudspeth Counties, the 24 fields currently listed as restricted areas for regulated articles other than seed were identified as having been planted with contaminated seed, and the areas surrounding those fields are designated as restricted areas for seed. Because there were no fields found to contain bunted wheat kernels in El Paso and Hudspeth Counties—only fields planted with contaminated seed—there are no surveillance areas in those two counties.

Under this proposed rule, there would no longer be any restricted areas for seed in El Paso and Hudspeth Counties, which would leave those 24 fields as the only regulated areas within El Paso and Hudspeth Counties. However, as was described above with regard to New Mexico, we have modified the numbering convention used to identify the individual fields in El Paso and Hudspeth Counties in this proposed rule. These proposed new numerical designations, which were made possible as a result of more up-to-date mapping information, would allow us to number the fields in a manner consistent with the system used by our Karnal bunt program staff in Arizona and central Texas. Although the proposed regulations list 25 fields in El Paso and Hudspeth Counties, as opposed to the 24 fields listed in the current regulations, we are not proposing to place a new field under regulatory restrictions. Rather, the additional entry occurred as a result of one large field in El Paso County being subdivided under the new numbering system. The individual fields that would be the regulated areas in El Paso and Hudspeth Counties are listed in the description of regulated areas contained in § 301.89–3(f) in the rule portion of this document.

In San Saba County, the 18 fields currently listed as restricted areas for regulated articles other than seed were identified as a result of the detection of bunted kernels during the National Karnal Bunt Survey. Based on those detections, surrounding portions of McCulloch and Mills Counties and all of San Saba County were designated as restricted areas for seed, and portions of McCulloch, Mills, and San Saba Counties in closer proximity to the 18 fields were designated as surveillance areas.

Under this proposed rule, Mills County would be entirely removed from the regulations. No fields in Mills County have been linked to Karnal bunt, and the grain grown in the small area of the county that is in the current surveillance area is used for forage and is not moved out of the immediate area. Based on those considerations, we consider Mills County to be a low pest risk area, and we believe that removing it from the regulations would not increase the risk of Karnal bunt spreading to new areas of Texas or the United States.

In addition, there would no longer be any restricted areas for seed in McCulloch and San Saba Counties, and those portions of McCulloch and San Saba Counties that are currently designated as surveillance areas would be redesignated as regulated areas. Those proposed new regulated areas in McCulloch County and the eastern portion of San Saba County would, however, be somewhat smaller than the current surveillance areas. This is because our Karnal bunt program staff and State cooperators in Texas have adjusted the boundaries to make them more accurate by removing nonagricultural acreage and areas outside the 3-mile buffer that has been generally used to establish surveillance areas. We would also remove the list of the 18 individual fields in San Saba County from the regulations because they all fall within the area described in this proposed rule as the regulated area in San Saba County. The boundaries of the proposed new regulated areas in McCulloch and San Saba Counties are set forth in the description of regulated areas contained in § 301.89–3(f) in the rule portion of this document.

Changes Associated With the Reclassification of Regulated Areas

Paragraph (d) of § 301.89–6 provides the eligibility criteria for the movement of commercial lots of seed grown in a restricted area for seed. Among those criteria is a requirement that the seed be treated in accordance with § 301.89–13(f), which pertains exclusively to the treatment of commercial lots of seed. Because we are proposing to remove the restricted area for seed classification, the eligibility criteria for movement of commercial lots of seed grown in a restricted area for seed, as well as the associated treatment regimen, would no longer be necessary. Therefore, we are proposing to remove § 301.89–6(d) and § 301.89–13(f) from the regulations.

In § 301.89–1, the term *distinct definable area* is defined as ''A commercial wheat production area of contiguous fields that is separated from other wheat production areas by desert, mountains, or other nonagricultural terrain as determined by an inspector, or, in the case of restricted areas, as determined by an inspector based on survey results.'' Because we are proposing to remove the restricted area for seed classification and the restricted area for regulated articles other than seed classification, the reference to ''restricted areas'' in that definition is no longer necessary. Therefore, we would amend the definition of *distinct definable area* by removing the words ''or, in the case of restricted areas, as determined by an inspector.'' We would retain the reference to the use of survey results because, as explained previously, survey results have been used in determining the boundaries of the proposed regulated areas described in this proposed rule.

Paragraph (b) of § 301.89–6 currently states the eligibility criteria for the movement under certificate of grain from a surveillance area. Because those criteria would continue to apply to the movement under certificate of grain grown in a regulated area, and because we have proposed to remove the surveillance area classification, we are proposing to amend § 301.89–6(b) by removing the reference to ''a surveillance area'' and replacing it with a reference to ''a regulated area.''

Cleaning of Vegetable Crops

We are proposing to remove the requirement for the cleaning of soil and plant debris from vegetable crops grown in fields that are restricted areas for regulated articles other than seed. We

are proposing to remove this requirement, which is currently located in § 301.89–12(b), for two reasons. First, as noted previously, some of the proposed new regulated areas in California, parts of Arizona, and central Texas would be distinct definable areas rather than individually listed fields. With those field numbers no longer being listed in the regulations, there would be no distinction made between formerly restricted fields and the other fields in those regulated areas, and thus no clear way to identify those fields from which the vegetable crops would require cleaning. Secondly, we believe, based on our experience in administering the Karnal bunt program, that the intended use of the products (consumption) and normal business practices (cleaning and grading of the crops) are sufficient to mitigate the risk of vegetable crops spreading Karnal bunt to other areas of 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 economically significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We are proposing to amend the Karnal bunt regulations by removing the current restricted and surveillance area categories of regulated areas and replacing them with a single classification. As part of this proposed change in the regulations, we would release from regulation most of the areas currently designated as restricted areas for seed; remove the prohibition on planting wheat, durum wheat, and triticale in fields associated with Karnal bunt; and remove the cleaning requirement for vegetables grown in those fields. We would also add several fields or areas in three Arizona counties to the list of regulated areas based on the detection of bunted kernels in fields in those counties during 1998.

Our proposed modifications to the way regulated areas are classified would benefit the growers who have fields that are currently designated as restricted areas for regulated articles other than seed and fields that are located in restricted areas for seed lying outside the surveillance areas. Growers in the current surveillance areas would be largely unaffected by the proposed changes. Removing those areas currently designated as restricted areas for seed from the regulations would greatly reduce the total area in the southwestern United States that is regulated for Karnal bunt.

Even though the restricted area for regulated articles other than seed classification would be removed under this proposed rule, those fields currently designated as such would remain under regulation because they would still either be part of a regulated area or would themselves be regulated areas. However, this proposed rule would have the effect of relaxing the restrictions that currently apply to the fields. Growers would have the option of planting wheat, durum wheat, or triticale in the fields, which is an option that is not currently available to them. Wheat, durum wheat, or triticale grown as grain (not seed) in those fields would be eligible for unrestricted movement under a certificate if it were tested and found free from bunted kernels prior to its movement from the field or before it was commingled with other grain. If bunted kernels were found, the grain would still be eligible for movement, but only under a limited permit that requires that the grain be moved to a specified destination for specified handling, utilization, or processing that will destroy the Karnal bunt or mitigate the risk of its spread. These are the same conditions that apply to the movement of grain from the current surveillance areas.

There are about 60 growers currently located in restricted areas for regulated articles other than seed (approximately 18,000 agricultural acres). The number, if any, of these growers who would plant wheat if they had the opportunity to do so is unknown. In deciding on whether to plant wheat rather than another crop, growers would no doubt weigh a variety of factors, including the likelihood of producing Karnal-bunt-positive wheat, the likelihood of receiving compensation for any positive wheat that is produced, and the profitability of the alternative crop (which can be comparable, or nearly comparable, to the profitability of wheat). However, information as to how individual growers might respond to those factors, and thus whether or not they would choose to resume planting wheat, is not available.

Vegetable growers with fields currently designated as restricted areas for regulated articles other than seed would also benefit from the proposed removal of that regulatory category, as it would result in the lifting of the current cleaning requirement that applies to vegetables grown in those fields. The benefit is not likely to be significant for most growers, however, since about 90 percent of the soil is routinely removed from vegetables during harvesting anyway. There are currently about 10 vegetable growers with fields designated as restricted areas for regulated articles other than seed.

Wheat seed growers with fields in restricted areas for seed lying outside the surveillance areas would also benefit from the proposal to modify the classification of regulated areas, since most would no longer be regulated. In the absence of regulation, they would be able to grow and move commercial wheat seed without restriction. Currently, these growers can move commercial wheat seed outside the regulated area only if it tests negative for Karnal bunt, is chlorine drenched, and is treated with a fungicide. Growers bear the cost of treatment, not testing. The cost of seed treatment varies widely among seed handlers, depending largely on labor and overhead costs. One handler, for example, calculated the total cost of treating 100 lbs. of seed at $7.10, while another handler calculated that cost at $3.10. Regardless of the cost, there is reason to believe that most seed handlers would continue the fungicide treatments, even with the rule change in effect, with the costs of those fungicide treatments continuing to be passed along to purchasers of the seed. (At least several handlers routinely treated seed prior to 1996, i.e., before Karnal bunt was detected and restrictions were imposed.) That, plus the likelihood that only a small portion of the acreage in the restricted areas for seed would be planted with seed if the restrictions were lifted, suggest that the benefits of the proposed change would be minimal. We estimate that only about 7 percent of the agricultural acreage in restricted areas for seed is planted with wheat, and of that acreage, only about 10 percent is planted for seed. This disparity in favor of grain over seed is not expected to change in the near term, regardless of any regulatory changes, given the current poor market conditions for seed and the fact that stored seed from previous years remains available. There are approximately 563 wheat growers in restricted areas for seed. The restricted areas for seed currently encompass about 1,958,000 agricultural acres, or 88 percent of the total regulated area of 2,214,000 agricultural acres.

Wheat growers in surveillance areas would be largely unaffected by the proposal, because they would remain regulated and would be subject to the same restrictions on the movement of regulated articles that they are now. There are 149 wheat growers in surveillance areas, which together comprise about 239,000 agricultural acres.

Also, the proposed rule would add certain areas in Arizona to the list of

regulated areas due to the detection of bunted kernels in those areas during sampling conducted in 1998. Because all of these new areas are located in areas currently designated as restricted areas for seed, their proposed designation as regulated areas under this proposed rule is not expected to have a significant effect. The changes that would result from the proposed redesignation would be that commercial lots of wheat seed would no longer be eligible for movement from those areas and grain grown in those areas would have to be tested for bunted kernels before being moved from the regulated area. We do not believe that these changes would have a significant economic impact on growers in the proposed new regulated areas because, as noted above, little commercial seed is actually produced in restricted areas for seed, alternative crops may be planted without restriction, and grain may be grown subject to testing prior to movement from the regulated area.

Small Entity Impact

The Regulatory Flexibility Act requires that agencies consider the economic impact of rule changes on small businesses, organizations, and governmental jurisdictions. Those entities most likely to be affected by this proposed rule are wheat growers located in the restricted areas for seed that would no longer be regulated, vegetable growers who would no longer have to clean their crops before movement, and wheat growers located in areas that would be added to the regulated areas due to the detection of Karnal bunt in 1998.

We estimate that there are approximately 588 wheat growers (324 in Arizona, 21 in California, 200 in New Mexico, and 43 in Texas) located in restricted areas for seed lying outside the surveillance areas that would no longer be regulated. We estimate that there are currently 60 growers of non-wheat crops located in restricted areas for regulated articles other than seed who would no longer be required to clean their crops as a condition of movement. Finally, we estimate that there are seven wheat growers in Arizona who have fields located in the restricted areas for seed that would be added to the list of regulated areas. Most of the wheat growers are assumed to have gross receipts of less than $0.5 million, the U.S. Small Business Administration's threshold for classifying wheat producers as small entities. Accordingly, the impact of the rule will be mostly on small entities.

Growers currently located in restricted areas for regulated articles other than seed and those in restricted areas for seed would benefit from the proposal to modify the classification of regulated areas. The proposal to add certain areas in Arizona currently located in restricted areas for seed to the list of regulated areas would have a negative impact on affected growers. However, for the reasons discussed above, neither aspect of the proposed rule is expected to have a significant economic impact on a substantial number of entities, large or small.

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

Executive Order 12372

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

Executive Order 12988

This 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

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

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are proposing to amend 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

§ 301.89–1 [Amended]

2. In § 301.89–1, the definition of *distinct definable area* would be amended by removing the words ‘‘, or, in the case of restricted areas, as determined by an inspector’’.

3. In § 301.89–3, paragraphs (e) and (f) would be revised to read as follows:

§ 301.89–3 Regulated areas.

* * * * *

(e) The Administrator will classify a field or area as a regulated area when:

(1) It is a field planted with seed from a lot found to contain a bunted wheat kernel; or

(2) It is a distinct definable area that contains at least one field that was found during survey to contain a bunted wheat kernel (the distinct definable area may include an area where Karnal bunt is not known to exist but where intensive surveys are required because of the area's proximity to a field found during survey to contain a bunted kernel); or

(3) It is a distinct definable area that contains at least one field that was found during survey to contain spores consistent with Karnal bunt and has been determined to be associated with grain at a handling facility containing a bunted wheat kernel (the distinct definable area may include an area where Karnal bunt is not known to exist but where intensive surveys are required because of the area's proximity to a field that has been associated with grain at a handling facility containing a bunted kernel).

(f) The following areas or fields are designated as regulated areas (maps of the regulated areas may be obtained by contacting the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, 4700 River Road Unit 134, Riverdale, MD 20737–1236):

ARIZONA

La Paz County. Beginning at the point where the Colorado River intersects the north side of sec. 32, T. 8 N., R. 21 W.; then east to the northeast corner of sec. 36, T. 8 N., R. 21 W.; then south to the southeast corner of sec. 1, T. 6 N., R. 21 W.; then west to the southwest corner of sec. 6, T. 6 N., R. 21 W.; then north to the intersection of the Colorado River; then northwest along the Colorado River to the point of beginning; and

Beginning at the northeast corner of sec. 22, T. 6 N., R. 21 W.; then south to the southeast corner of sec. 34, T. 5 N., R. 21 W.; then west to the Colorado River; then north along the Colorado River to the northern side of sec. 21, T. 6 N., R. 22 W.; then east to the point of beginning.

Maricopa County. Beginning at the southeast corner of sec. 33, T. 6 S., R. 5 W.; then west to the southwest corner of sec. 32, T. 6 S., R. 7 W.; then north to the northwest corner of sec. 5, T. 5

S., R. 7 W.; then east to the northeast corner of sec. 4, T. 5 S., R. 5 W.; then south to the point of beginning; and

Beginning at the southeast corner of sec. 25, T. 1 S., R. 1 E. and the intersection of the Maricopa/Pinal County line; west to the southwest corner of sec. 28, T. 1 S., R. 5 W.; then north to the northwest corner of sec. 4, T. 1 N., R. 5 W.; then east to the southwest corner of sec. 31, T. 2 N., R. 2 W.; then north to the northwest corner of sec. 31, T. 4 N., R. 2 W.; then east to the northeast corner of sec. 36, T. 4 N., R. 1 W.; then south to the southeast corner of sec. 36, T. 4 N., R. 1 W.; then east to the northeast corner of sec. 5, T. 3 N., R. 2 E.; then south to the southeast corner of sec. 32, T. 2 N., R. 2 E.; then east to the northeast corner of sec. 6, T. 1 N., R. 3 E.; then south to the southeast corner of sec. 7, T. 1 S., R. 3 E.; then west to the southwest corner of sec. 10, T. 1 S., R. 2 E.; then south to the southeast corner of sec. 28, T. 1 S., R. 2 E.; then west to the intersection of the Maricopa/Pinal county line; then north, west and south along the county line to the point of beginning; and

Beginning at the intersection of Interstate 10 and the Maricopa/Pinal County line; then east and north along the county line to the northeast corner of sec. 1, T. 2 S., R. 7 E.; then west to the southeast corner of sec. 31, T. 1 S., R. 7 E.; then north to the northeast corner of sec. 31, T. 1 N., R. 7 E.; then west to the northwest corner of sec. 31, T. 1 N., R. 6 E.; then north to the northeast corner of sec. 1, T. 2 N., R. 5 E.; then west to the northwest corner of sec. 6, T. 2 N., R. 5 E.; then south to the southwest corner of sec. 31, T. 2 N., R. 5 E.; then west to the northwest corner of sec. 2, T. 1 N., R. 4 E.; then south to the northwest corner of sec. 35, T. 1 S., R. 4 E.; then east to the intersection of Interstate 10; then south and east to the point of beginning; and

The following individual fields in Maricopa County are regulated areas:

301060505
301060506
301060601
301060602
301060603
301060604
304073004
304073005
304073010
304081410
304081413
304081415
304081417
304081505
304081506
304082202
304082302
304082303
304082607
304082703
306013222
306013231
306020404
306020501
306020601
306020623
316131901
316131904
316132302
316132604

Pinal County. Beginning at the intersection of the Maricopa/Pinal County line and the northwest corner of sec. 6, T. 2 S., R. 8 E.; then east to the northeast corner of sec. 2, T. 2 S., R. 8 E.; then south to the southeast corner of sec. 14, T. 3 S., R. 8 E.; then west to the southeast corner of sec. 14, T. 3 S., R. 6 E.; then south to the southeast corner of sec. 26, T. 4 S., R. 6 E.; then west to the southeast corner of sec. 26, T. 4 S., R. 4 E.; then south to the southeast corner of sec. 22, T. 6 S., R. 4 E.; then west to the southwest corner of sec. 19, T. 6 S., R. 3 E.; then north to the southeast corner of sec. 13, T. 6 S., R. 2 E.; then west to the southwest corner of sec. 16, T. 6 S., R. 2 E.; then north to the northwest corner of sec. 9, T. 4 S., R. 2 E.; then east to the southwest corner of sec. 6, T. 4 S., R. 4 E.; then north to the northwest corner of sec. 6, T. 4 S., R. 4 E.; then east to the northwest corner of sec. 6, T. 4 S., R. 5 E.; then north to the intersection of the Maricopa/Pinal County line; then east and north along the county line to the point of beginning; and

The following individual fields in Pinal County are regulated areas:

308102604
308102605
309021801
309021804
309021812
309031304
309033507
309042544
309042545
309042601
309042607
309042619
309050104
309050109
309050207

Yuma County. The following individual fields in Yuma County are regulated areas:

321010208
321010210
321010211
321010224
321010301
321010302
321011103
321033501
321033502
321033503
321033516
321033517
321033518
321033519
321040405
321040911
321040912
321040915
321040917
321040918
321040921
321040922
321041903
321041904
321041908
321041919
321042903
323030401
323030402
323030403
323030404
323030405
323030406
323030501
323030502
323030512
323030513
323030514
323030515
323030521

California

Imperial County. Beginning at the intersection of the Riverside/ Imperial County line and the California/Arizona State line; then west to the northwest corner of sec. 1, T. 9 S., R. 21 E.; the south to the California/ Arizona State line; then east and north along the State line to the point of beginning.

Riverside County. Beginning at the intersection of the Riverside/ Imperial County line and the California/Arizona State line; then west to the southwest corner of sec. 31, T. 8 S., R. 22 E.; then north to the northwest corner of sec. 30, T. 7 S., R. 22 E.; then north and northeast along the Palo Verde Valley agriculture area to the intersection of the California/Arizona State line; then south along the State line to the point of beginning.

New Mexico

Dona Ana County. The following individual fields in Dona Ana County are regulated areas:

113040501
113040502
113040506
113040507
113040508
113040601
113040602
113040702
113040902

113042601
113042602
113042707
113042708
113043401
113043407
113043503
113043508
113043509
113050201
113050202
113050301
113060701
113060702
113060703
113060801
113060809
113060901
113060902
113070702
113072701
113072702
113072703
113072704
113072705
113072706
113173103
113210401
113210402
113210403
113210406
113210407
113210808
113212103
113212802
113212806
113241601
113242708

Hidalgo County. The following individual fields in Hidalgo County are regulated areas:

123272403
123353001

Luna County. The following individual fields in Luna County are regulated areas:

129011301
129012201
129013003
129013006
129022502
129060806
129060901
129060902
129062001
129062801
129062802
129232801
129232804
129232805
129232806
129292404
129300506
129300608
129301104
129301301
129301401
129301701
129301801
129301806
129302001
129302702
129303302
129440601
129440602
129440701
129440702
129440703
129440708
129440801
129441701

Sierra County. The following individual fields in Sierra County are regulated areas:

151013401
151441201
151441202
151441306
151442201
151442601
151442602
151442603
151442604
151442605
151442606
151442607
151442608
151442609
151442610
151442611
151442612
151442613
151442614
151442701
151443501
151443502
151443503
151443601
151443602
151443603
151443604
151451306
151453001
151453101
151453102
151453103
151453104
151502801

Texas

El Paso County. The following individual fields in El Paso County are regulated areas:

441141301
441142301
441142302
441142303
441142304
441142305
441142306
441142307
441142401
441142402
441142403
441142404
441241301
441241302
441252801
441252803
441252804
441252901
441253201
441253302
441253401

Hudspeth County. The following individual fields in Hudspeth County are regulated areas:

429050701
429050702
429070101
429070102

McCulloch County. Beginning at the McCulloch/San Saba County line and the line of latitude 31.232299 N.; then west along the line of latitude 31.232299 N. to the line of longitude -99.13473 W.; then north along the line of longitude -99.13473 W to the line of latitude 31.31004 N.; then east along the line of latitude 31.31004 N. to the line of longitude -99.11427 W.; then north along the line of longitude -99.11427 W to the line of latitude 31.283487 N.; then east along the line of latitude 31.283487 N. to the McCulloch/San Saba County line; then south to the point of beginning.

San Saba County. Beginning at the San Saba/Mills County line and the line of longitude -98.5851 W.; then south along the line of longitude -98.5851 W to the line of latitude 31.167959 N.; then west along the line of latitude 31.167959 N. to the line of longitude -98.903233 W.; then north along the line of longitude -98.903233 W. to the line of latitude 31.310819 N.; then east along the line of latitude 31.3100819 N. to the San Saba/Mills County line; then south along the San Saba/Mills County line to the point of beginning; and

Beginning at the San Saba/McCulloch County line and the line of latitude 31.283487 N.; then east along the line of latitude 31.283487 N. to the line of longitude -99.063487 W.; then south along the line of longitude -99.063487 W. to the line of latitude 31.232299 N.; then west along the line of latitude 31.232299 N. to the San Saba/McCulloch County line; then north along the San Saba/McCulloch County line to the point of beginning.

4. Section 301.89–4 would be revised to read as follows:

§ 301.89–4 Planting.

Wheat, durum wheat, and triticale may be planted in all fields within a regulated area. All wheat seed, durum wheat seed, and triticale seed that originates within a regulated area must be tested and found free from spores and bunted wheat kernels, then treated with a fungicide in accordance with

§ 301.89–13(d), before it may be planted within a regulated area.

§ 301.89–6 [Amended]

5. Section 301.89–6 would be amended as follows: a. In paragraph (b), the word ''surveillance'' would be removed and the word ''regulated'' would be added in its place.

b. Paragraph (d) would be removed and paragraph (e) would be redesignated as paragraph (d).

§ 301.89–12 [Amended]

6. In § 301.89–12, paragraph (b) would be removed and reserved.

§ 301.89–13 [Amended]

7. In § 301.89–13, paragraph (f) would be removed.

Done in Washington, DC, this 3rd day of March 1999.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–5779 Filed 3–8–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–62–AD]

Airworthiness Directives; Bell Helicopter Textron Canada (BHTC) Model 206L–4 Helicopters

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 BHTC Model 206L–4 helicopters. This proposal would require replacing certain hydraulic relief valves (valves) with airworthy valves. This proposal is prompted by a pilot's report of intermittent hydraulic pressure in the flight controls that was caused by a defective hydraulic relief valve. The actions specified by the proposed AD are intended to prevent intermittent hydraulic pressure to the flight controls and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before May 10, 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–62–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas. 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 Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mark Flora, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5172, fax (817) 222–5783.

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 should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, 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 No. 98–SW–62–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, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–62–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

Transport Canada, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on BHTC Model 206L–4 helicopters. Transport Canada advises that a manufacturing defect found on a valve could lead to intermittent loss of hydraulic pressure to the flight controls.

BHTC has issued Bell Helicopter Textron Alert Service Bulletin No. 206L–98–111, dated July 24, 1998, which specifies replacing the valve, part number (P/N) 206–076–036–101, with a better valve, P/N 206–076–036–105. Transport Canada classified this service bulletin as mandatory and issued AD No. CF–98–34, dated September 10, 1998, in order to assure the continued airworthiness of these helicopters in Canada.

This helicopter model is manufactured in Canada and is 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, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of the Transport Canada, 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.

Since an unsafe condition has been identified that is likely to exist or develop on other BHTC Model 206L–4 of the same type design registered in the United States, the proposed AD would require replacing the valve, P/N 206–076–036–101, with an improved valve, P/N 206–076–036–105. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

The FAA estimates that 78 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $1,380. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $112,320 to replace the valve in the entire fleet.

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 a new airworthiness directive to read as follows:

Bell Helicopter Textron Canada: Docket No. 98–SW–62–AD.

Applicability: Model 206L–4 helicopters, serial numbers 52001 through 52208, certificated in any category.

Note 1: This AD applies to each helicopter 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 helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 300 hours time-in-service, unless accomplished previously.

To prevent intermittent hydraulic pressure to the flight controls and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove hydraulic relief valve, part number (P/N) 206–076–036–101, and replace it with an improved hydraulic relief valve, P/N 206–076–036–105, in accordance with the Accomplishment Instructions in Bell Helicopter Textron Alert Service Bulletin No. 206L–98–111, dated July 24, 1998.

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

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

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

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD No. CF–98–34, dated September 10, 1998.

Issued in Fort Worth, Texas, on March 1, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–5723 Filed 3–8–99; 8:45 am]

BILLING CODE 4910–13–U

POSTAL SERVICE

39 CFR Part 111

Packaging Material Standards for Flat-Size Periodicals and Standard Mail

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: To ensure that packages maintain their integrity during transportation and processing, the Postal Service plans to prohibit use of string and rubber bands to secure packages of flat-size Periodicals and Standard Mail when prepared on pallets. Mailers are also hereby notified that, in the future, the Postal Service plans to prohibit use of string and rubber bands to secure packages of flat-size Periodicals and Standard Mail prepared in sacks.

DATES: Comments must be received on or before April 8, 1999.

ADDRESSES: Mail or deliver written comments to the Manager, Mail Preparation and Standards, USPS Headquarters, 475 L'Enfant Plaza SW, Room 6800, Washington, DC 20260–2405. Copies of all written comments will be available for inspection and photocopying at USPS Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor N, Washington, DC between 9 a.m. and 4 p.m., Monday through Friday.

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

SUPPLEMENTARY INFORMATION: Many packages of Periodicals and Standard Mail, tendered to the Postal Service either on pallets or in sacks, do not maintain their integrity during transportation to postal plants and during postal processing. The Postal Service must redirect the resulting loose packages or broken packages (individual pieces) to manual operations for additional processing. If packages lose their integrity while being processed on small parcel and bundle sorters (SPBSs), this can cause machine slowdowns and stoppages, and can also result in these packages being manually processed by postal employees.

Experience shows that packages that are secured together using string or rubber bands are the most likely to loose their integrity. A study performed on behalf of the Postal Service Engineering and Development Center confirmed that packages prepared with string or rubber bands are the most likely to break, and that the tendency for these packages to break increases as the thickness of the package increases. This study also showed that for packages prepared with plastic strapping, the greater the thickness of the package, the more likely it is for the package to remain intact.

The Mailers Technical Advisory Committee (MTAC) working group on Pallet, Container and Package Integrity independently confirmed that packages prepared with string and rubber bands are the most likely to break, resulting in increased costs for the Postal Service, and increased time to process the pieces in those packages. Accordingly, this MTAC work group supports the Postal Service's proposal to prohibit the use of string and rubber bands to secure packages for flat-size Standard and Periodicals Mail that is presented to the Postal Service on pallets. The Postal Service also believes that mailers should not use string or rubber bands to prepare packages of flat-size mail that are placed in sacks. In order to ease the burden imposed on mailers who currently use rubber bands and string to secure flat-

size packages in sacks, the Postal Service is not proposing to prohibit use of string and rubber bands on packages of flat-size mail placed in sacks at this time. Mailers are advised, however, that such a prohibition will be proposed in the future and should begin to plan accordingly.

A clarification that wire or metal strapping is not permissible banding material for flat-size mail prepared in sacks has also been included in these proposed revisions to packaging standards.

The Postal Service is proposing to implement this revision to the mail preparation standards on July 1, 1999.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revisions of the Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure.

PART 111—[AMENDED]

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

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the Domestic Mail Manual as set forth below:

M Mail Preparation and Sortation

M000 General Preparation Standards

* * * * *

M020 Packages and Bundles

1.0 BASIC STANDARDS

* * * * *

1.4 Palletization

[Amend 1.4 to read as follows:]

Packages and bundles on pallets must be able to withstand normal transit and handling without breakage or injury to USPS employees. Heavy-gauge shrinkwrap over plastic banding, shrinkwrap alone, or banding material alone is acceptable if the package or bundle can stay together during normal processing. Except for packages and bundles of individually polywrapped pieces, packages and bundles on BMC pallets must be shrinkwrapped. Packages and bundles of individually polywrapped pieces on BMC pallets may be secured with banding material only. All packages and bundles on BMC pallets must be machinable on BMC parcel sorters. Machinability is determined by the USPS. If banding material is used to secure packages, it must be applied at least once around the length and once around the girth. String, string-like material closed with a tie, rubber bands, wire, and metal strapping are prohibited banding materials.

* * * * *

2.0 ADDITIONAL STANDARDS—FIRST-CLASS MAIL, PERIODICALS, AND STANDARD MAIL (A)

* * * * *

2.2 Flat-Size Pieces

[Amend 2.2 to read as follows:]

Flat-size pieces are subject to these packaging standards:

a. Flat-size pieces must always be secured into packages, unless excepted by standard. Wire and metal strapping must not be used as banding materials.

b. For Periodicals and Standard Mail prepared on pallets, string, string-like material closed with a tie, and rubber bands must not be used as banding material. For both palletized and sacked mail, it is recommended that plastic strapping or shrink-wrap, or both, be used to secure packages.

c. Though not subject to a specific thickness limit, packages of flat-size pieces must be secure and stable. Packages are subject to specific weight limits if palletized.

* * * * *

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 99–5784 Filed 3–8–99; 8:45 am]

BILLING CODE 7710–12–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7279]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this proposed

rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Florida	Kissimmee (City), Osceola County.	East City Canal	Confluence with Lake Tohopekaliga	*58	*57
			Approximately 1,300 feet upstream of West Vine Street.	*69	*68
		West City Canal	Confluence with Lake Tohopekaliga	*58	*57
			At confluence with East City Canal	*66	*68
		Shingle Creek	Approximately 1.14 miles upstream of CSX Transportation.	*67	*66
			Approximately 0.74 mile upstream of State Road 530.	*75	*73
Maps available for inspection at the Kissimmee City Hall, Engineering Department, 2nd Floor, 101 North Church Street, Kissimmee, Florida. Send comments to The Honorable Frank Attkisson, Mayor of the City of Kissimmee, 101 North Church Street, Kissimmee, Florida 34741.					
Florida	Osceola County (Unincorporated Areas).	Peg Horn Slough	Approximately 150 feet upstream of confluence with St. Cloud Canal (Canal 31).	None	**61
			Approximately 950 feet upstream of Missouri Avenue.	None	**72
		C–33 Canal	Confluence with Lake Gentry	None	**66
			Confluence of Alligator Lake	None	**66
		Canoe Creek (C–34 Canal).	Downstream side Canoe Creek Road (SR 523).	None	**56
			At St. Cloud Airfield	None	**66
		WPA Canal	Approximately 330 feet upstream side of Friars Cove Road.	*57	**58
			Downstream side of Old Canoe Creek Road.	None	**73
		West City Canal	Confluence with Lake Tohopekaliga	*58	**57
			Downstream side of U.S. Route 17/92	None	**58
		Shingle Creek	Confluence with Lake Tohopekaliga	*58	**57
			Approximately 200 feet upstream of Osceola Parkway.	*77	**76
		Shingle West	Just downstream of Poinciana Boulevard	*66	**67
			Upstream side of U.S. Route 192	None	**80
		Shingle West Tributary	At confluence with Shingle West	*64	**65
			Approximately 400 feet upstream of Poinciana Boulevard.	None	**67
		St. John's River	Downstream corporate limits	None	**17
			Upstream corporate limits	None	**18
		Lake Hatchineha	Entire shoreline within county	None	**56
		Alligator Lake	Entire shoreline within county	None	**66
		Lake Gentry	Entire shoreline within county	None	**66
		Brick Lake	Entire shoreline within county	None	**66
		Pearl Lake	Entire shoreline within county	None	**66
		Lake Lizzy	Entire shoreline within county	None	**66
		Sardine Lake	Entire shoreline within county	None	**66
		Live Oak Lake	Entire shoreline within county	None	**66
		Trout Lake	Entire shoreline within county	None	**66
		Lake Joel	Entire shoreline within county	None	**63

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Lake Preston	Entire shoreline within county	None	**63
		Lake Myrtle	Entire shoreline within county	None	**63
		Lake Bullock	Entire shoreline within county	None	**66
		Lake Center	Entire shoreline within county	None	**66
		Coon Lake	Entire shoreline within county	None	**66
		Reedy Creek Tributary No. 1.	Approximately 7,000 feet downstream of Marigold Avenue.	None	**65
			Approximately 0.45 mile upstream of San Miguel Road.	None	**68
		Reedy Creek Tributary No. 2.	Approximately 4,430 feet downstream of Marigold Avenue.	*65	**66
			Approximately 870 feet upstream of Marigold Avenue.	None	**67
		Reedy Creek Tributary No. 3.	Approximately 0.75 mile downstream of Doverplum Avenue.	None	**63
			Downstream side of San Remo Road	None	**68
		Lake Davenport	Entire shoreline within county	*111	**112
		Davenport Creek	Approximately 1 mile downstream of State Route 545.	None	**80
			Downstream side of Oak Island Road	None	**108
		Davenport Creek	At confluence with Davenport Creek	None	**107
		Tributary No. 1	Upstream side of Oak Island Road	None	**112
		Davenport Creek	At confluence with Davenport Creek	None	**106
		Tributary No. 2	Approximately 0.91 mile upstream of confluence with Davenport Creek.	None	**107

**North American Vertical Datum of 1988.

Maps available for inspection at the County Administrative Building, Engineering Department, Room 249, 17 South Vernon Avenue, Kissimmee, Florida.

Send comments to Mr. Robert Magnaghi, Osceola County Manager, 17 South Vernon Avenue, Room 17, Kissimmee, Florida 34741–5488.

Florida	St. Cloud (City), Osceola County.	Peg Horn Slough	Approximately 250 feet upstream of confluence with St. Cloud Canal (Canal 31).	None	*61
			Approximately 150 feet downstream of Missouri Avenue.	None	*71
		WPA Canal	Upstream side of Old Canoe Creek Road	None	*68
			At St. Cloud Airfield	None	*73

Maps available for inspection at the Municipal Services Complex, Public Works Department, 2901 17th Street, St. Cloud, Florida.

Send comments to Mr. Jack Shannin, City of St. Cloud Interim Manager, 1300 9th Street, St. Cloud, Florida 34769.

Maine	Rangeley (Town), Franklin County.	Cupsuptic Lake	Entire length of shoreline within community.	None	*1,469
		Dodge Pond	Entire length of shoreline within community.	None	*1,529
		Dodge Pond Stream	Approximately 1,185 feet downstream of State Routes 4 and 16.	None	*1,520
			Upstream side of Dodge Pond Dam	None	*1,529
		Haley Brook	Approximately 473 feet downstream of Maine Street.	None	*1,520
			Upstream side of Haley Pond Dam	None	*1,528
		Haley Pond	Entire length of shoreline within community.	None	*1,528
		Kennebago River	Approximately 1,625 feet downstream of State Route 16.	None	*1,469
			Approximately 75 feet upstream of State Route 16.	None	*1,479
		Mooselookmeguntic Lake	Entire length of shoreline within community.	None	*1,469
		Quimby Brook	Approximately 825 feet downstream of State Routes 4 and 16.	None	*1,520
			Approximately 275 feet upstream of Quimby Pond Road.	None	*1,682
		Rangeley Lake	Entire length of shoreline within community.	None	*1,520
		Round Pond	Entire length of shoreline within community.	None	*1,550
		Round Pond Outlet	Approximately 430 feet downstream of Dodge Pond Road.	None	*1,529

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 10 feet upstream of Round Pond Dam.	None	*1,550
		Rangeley River	Approximately 4,345 feet downstream of Rangeley Dam.	None	*1,469
			Approximately 35 feet upstream of State Route 4.	None	*1,520
Maps available for inspection at the Rangeley Town Office, 3 School Street, Rangeley, Maine.					
Send comments to Mr. William Lundrigan, Rangeley Town Manager, P.O. Box 1070, Rangeley, Maine 04970.					
Massachusetts	Millbury (Town), Worchester County.	Ramshorn Brook	Approximately 1,300 feet downstream of Dolan Road and Dam.	*609	*610
			Approximately 0.5 mile upstream of Dolan Road and Dam (upstream corporate limits).	None	*633
		Dorothy Pond	Upstream side of Riverlin Street	None	*393
			Approximately 700 feet upstream of Wheelock Avenue.	None	*399
Maps available for inspection at the Town Hall, Planner's Office, 127 Elm Street, Millbury, Massachusetts.					
Send comments to Mr. Donald Gaulthier, Chairman of the Board of Selectmen, Millbury Town Hall, 127 Elm Street, Millbury, Massachusetts 01527.					
Minnesota	Sauk Rapids (City), Benton County.	Mississippi River	Downstream corporate limits	*992	*991
			Approximately 1.42 miles upstream of State Highway 152 (1st Street South).	*1,000	*999
		County Ditch No. 3	At confluence with Mississippi River	*993	*992
Maps available for inspection at the Sauk Rapids City Hall, 115 North 2nd Avenue, Sauk Rapids, Minnesota 56379–1660.					
Send comments to The Honorable Jerry Leese, Mayor of the City of Sauk Rapids, 115 North 2nd Avenue, Sauk Rapids, Minnesota 56379–1660.					
Mississippi	Brookhaven (City), Lincoln County.	Stream 4 (Halbert Branch)	Approximately 520 feet downstream of Natchez Avenue.	*431	*430
			Approximately 250 feet upstream of East Meadowbrook Drive.	*469	*468
Maps available for inspection at the Building Inspector's Office, 301 South First Street, Brookhaven, Mississippi.					
Send comments to The Honorable W.W. Godbold, Mayor of the City of Brookhaven, P.O. Box 560, Brookhaven, Mississippi 39602.					
Mississippi	Lincoln County (Unincorporated Areas).	Halbert Branch	At U.S. Highway 51	*412	*413
			Approximately 1.13 miles upstream of U.S. Highway 84.	*427	*426
Maps available for inspection at the Lincoln County Records Room, 301 South First Street, Brookhaven, Mississippi.					
Send comments to Mr. J. Ronny Smith, Lincoln County Administrator, P.O. Box 555, Brookhaven, Mississippi 39602.					
New Hampshire	Bow (Town), Merrimack County.	Merrimack River	At the confluence of the Soucook River	*203	*204
			Approximately 1.52 miles upstream of Garvins Falls Dam.	*230	*228
Maps available for inspection at the Bow Town Hall, Building Department, 10 Grandview Road, Bow, New Hampshire.					
Send comments to Mr. Albert St. Cyr, Bow Town Manager, 10 Grandview Road, Bow, New Hampshire 03304.					
New Jersey	Lavallette (Borough), Ocean County.	Atlantic Ocean	Approximately 100 east of the intersection of Guyer Avenue and Grand Central Avenue 35N.	*6	#1
			Approximately 1,050 feet east of the intersection of Brown Avenue and Grand Central Avenue 35N.	*12	*13
			At the intersection of Brooklyn Avenue and West Central.	None	*5
		Barnegat Bay	At the intersection of Pershing Boulevard and Bullard Drive.	*7	*5

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Lavallette Borough Hall, 1306 Grand Central Avenue, Lavallette, New Jersey. Send comments to The Honorable Thomas Walls, Mayor of the Borough of Lavallette, P.O. Box 67, Lavallette, New Jersey 08735.					
New Jersey	Stafford (Township), Ocean County.	Manahawkin Mill Creek	Approximately 1.2 miles downstream of State Route 72.	*8	*9
			Approximately 1,000 feet downstream of State Route 72.	None	*19
		Manahawkin Lake	Entire shoreline within community	None	*28
		Holiday Lake	Entire shoreline within community	None	*57
		Barnegat Bay	At corporate limits	*8	*9
			Approximately 1,200 feet northwest of confluence of Crooked Creek and Corrigans Straight Ditch.	*8	*10
		Manahawkin Bay	At Turtle Cove, Big Cove, and North Pond.	*8	*12
			At the intersection of East Bay Avenue and Hilliard Boulevard.	*8	*9
Maps available for inspection at the Township Hall, 260 East Bay Avenue, Manahawkin, New Jersey. Send comments to The Honorable Carl W. Block, Mayor of the Township of Stafford, 260 East Bay Avenue, Manahawkin, New Jersey 08050.					
New York	Clarkstown (Town), Rockland County.	Demarest Kill	Approximately 750 feet upstream of the confluence with West Branch Hackensack River.	*98	*97
			Approximately 1,900 feet upstream of New Hempstead Road.	*172	*173
		Pascack Brook	Upstream side of Pascack Road	None	*354
			Approximately 2,500 feet upstream of Pascack Road.	None	*410
Maps available for inspection at the Town of Clarkstown Department of Environmental Control, 10 Maple Avenue, New City, New York. Send comments to Mr. Charles E. Holbrook, Town of Clarkstown Supervisor, 10 Maple Avenue, New City, New York 10956.					
New York	Mohawk (Village), Herkimer County.	Mohawk River	Approximately 480 feet downstream of Mohawk Dam.	*393	*392
			Approximately 1,500 feet upstream of confluence of Fulmer Creek.	*395	*395
			Approximately 560 feet northwest of intersection of Warren Road and West Main Street.	None	*395
		Fulmer Creek	At confluence with Mohawk River	*395	*394
			Approximately 1,700 feet upstream of confluence with Mohawk River.	*395	*394
Maps available for inspection at the Village of Mohawk Hall, Village Clerk's Office, 28 Columbia Street, Mohawk, New York. Send comments to The Honorable Leo F. Kinville, Mayor of the Village of Mohawk, 28 Columbia Street, Mohawk, New York 13407.					
New York	Verona (Town), Oneida County.	Fish Creek	Approximately 8,800 feet downstream of Cook Road.	*376	*377
			Approximately 1.60 miles upstream of Higginsville Road.	*384	*383
Maps available for inspection at the Verona Town Office Building, 6600 Germany Road, Durhamville, New York. Send comments to Mr. Maurice Deeley, Supervisor of the Town of Verona, 6600 Germany Road, Durhamville, New York 13054.					
Pennsylvania	Clarks Summit (Borough, Lackawanna).	Tributary A	At downstream corporate limits	*1,143	*1,147
			Approximately 300 feet upstream of Linden Street.	*1,262	*1,161
		Tributary A1	At confluence with Tributary A	*1,153	*1,155
			Just downstream of South Abington Road	*1,260	*1,262
		Tributary B	Just downstream of Terrace Drive	*1,226	*1,227
			At upstream corporate limits	*1,325	*1,326
Maps available for inspection at the Clarks Summit Borough Hall, 304 South State Street, Clarks Summit, Pennsylvania. Send comments to Mr. Edward M. Bush, Sr., Clarks Summit Borough Council President, 304 South State Street, Clarks Summit, Pennsylvania 18411.					
Pennsylvania	Smithfield (Township), Monroe County.	Delaware River	Approximately 1 mile downstream of Interstate 80.	*315	*314

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 1.5 miles downstream of upstream corporate limits.	*330	*331
		Shawnee Creek	At the confluence with the Delaware River.	*324	*325
			Approximately 80 feet upstream of River Road.	*325	*326
		Sambo Creek	Approximately 0.9 mile west of the intersection of Valhalla Drive and State Route 209, within the corporate limits of the Township of Smithfield.	None	*452
		Cherry Creek	Approximately 500 feet south of the intersection of Broad Street and Interstate 80, within the corporate limits at the Township of Smithfield.	None	*322
Maps available for inspection at the Smithfield Township Municipal Building, Route 209, East Stroudsburg, Pennsylvania.					
Send comments to Mr. Russell C. Albert, Chairman of the Smithfield Township Board of Supervisors, Smithfield Township Municipal Building, R.D. 5, Box 5229, East Stroudsburg, Pennsylvania 18301.					
Pennsylvania	West Hempfield (Township), Lancaster County.	Susquehanna River	At downstream corporate limits	*239	*244
			Approximately 0.68 mile upstream of U.S. Route 30.	*252	*253
		Chickies Creek	Approximately 320 feet upstream of Marietta Pike.	None	*273
			At confluence with Susquehanna River	None	*260
		Tributary No. 1 to Shawnee Run.	At downstream corporate limits	None	*307
			Approximately 1,000 feet upstream of Malleable Road.	None	*339
		Shawnee Run	At corporate limits	None	*358
			Approximately 620 feet upstream of corporate limits.	None	*363
Maps available for inspection at the West Hempfield Township Municipal Building, 3401 Marietta Avenue, Lancaster, Pennsylvania.					
Send comments to Mr. Charles E. Douts, Jr., Manager, Secretary/Treasurer of the Township of West Hempfield, 3401 Marietta Avenue, Lancaster, Pennsylvania 17601.					
Tennessee	Cheatham County (Unincorporated Areas).	Harpeth River	Approximately 0.45 mile upstream of Old Pinnacle Road.	*497	*498
			Approximately 4 miles upstream of East Kingston Springs Road.	*520	*519
		South Harpeth River	At the confluence with the Harpeth River	*517	*516
			Approximately 0.38 mile downstream of Anderson Road.	*517	*516
Maps available for inspection at the Cheatham County Courthouse, Building Commissioner's Office, 100 Public Square, Ashland City, Tennessee.					
Send comments to Mr. William R. Orange, Cheatham County Executive, 100 Public Square, Suite 105, Ashland City, Tennessee 37015.					
Tennessee	Decatur County (Unincorporated Areas).	Tennessee River	Upstream county boundary	None	*374
			At confluence of Rockets Creek	None	*376
			At confluence of Cub Creek	None	*377
			At confluence of Lick Creek	None	*377
			At confluence of Beech River	None	*380
			At confluence of Whites Creek	None	*383
			At confluence of Turnbo Creek	None	*391
			At confluence of Stewman Creek	None	*391
			At confluence of Doe Creek	None	*392
			Downstream county boundary	None	*393

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Decatur County Courthouse, County Executive Office, 22 Main Street, Decaturville, Tennessee.					
Send comments to Mr. Wayne Odle, Decatur County Executive, Decatur County Courthouse, 22 Main Street, P.O. Box 488, Decaturville, Tennessee 38329.					
Tennessee	Kingston Springs (Town), Cheatham County.	Buffalo Gap Cutoff	At the confluence with the Harpeth River	*498	*499
			Approximately 0.40 mile upstream of East Kingston Springs Road.	*514	*513
		Harpeth River	Approximately 0.45 mile upstream of Old Pinnacle Road.	*497	*498
			Approximately 0.03 mile upstream of Interstate Route 40.	*514	*513
Maps available for inspection at the Kingston Springs Town Hall, 396 Spring Street, Kingston Springs, Tennessee.					
Send comments to The Honorable Tony Campbell, Mayor of the Town of Kingston Springs, P.O. Box 256, Kingston Springs, Tennessee 37082.					
Tennessee	Pegram (Town), Cheatham County.	Harpeth River	Approximately 0.21 mile upstream of Riveview Drive.	*526	*527
			Approximately 0.1 mile downstream of East Kingston Springs Road.	*509	*508
Maps available for inspection at the Pegram City Hall, 482 Thompson Road, Pegram, Tennessee.					
Send comments to The Honorable Aubrey Chambers, Mayor of the Town of Pegram, P.O. Box 249, Pegram, Tennessee 37143.					
Vermont	Royalton (Town), Windsor County.	First Branch White River	At confluence with White River	*475	*471
			Approximately 1,800 feet downstream of the county boundary.	*511	*510
		Second Branch White River.	At confluence with White River	*506	*503
			Approximately 160 feet upstream of the furthest upstream corporate limits.	*528	*527
		White River	Approximately 550 feet upstream of corporate limits with Sharon, Vermont.	*458	*457
			Approximately 150 feet upstream of corporate limits with Bethel, Vermont.	*532	*531
Maps available for inspection at the Royalton Town Office Building, Safford Street, South Royalton, Vermont.					
Send comments to Mr. Robert Hull, Chair for the Town of Royalton Selectboard, P.O. Box 680, South Royalton, Vermont 05068.					
Virginia	Rocky Mount (Town), Franklin County.	Furnace Creek	Approximately 25 feet downstream of Scuffling Hill Road.	None	*991
			Approximately 75 feet downstream of Route 40/Franklin Street.	None	*1,035
		Furnace Creek Tributary	Approximately 75 feet downstream of Route 40/Franklin Street.	None	*1,035
			Approximately 1,900 feet upstream of Franklin Street.	None	*1,046
Maps available for inspection at the Rocky Mount Town Hall, 345 Donald Avenue, Rocky Mount, Virginia.					
Send comments to The Honorable Benjamin L. Pinckard, Mayor of the Town of Rocky Mount, 345 Donald Avenue, Rocky Mount, Virginia 24151.					

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–5610 Filed 3–8–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7278]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that

the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller @ fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Alaska	Kenai Peninsula Borough.	Kenai River Study	Approximately 6.1 miles downstream of confluence with Shikok Creek.	*17.5	*18.5
			Approximately 4,500 feet downstream of confluence with Shikok Creek.	*36.5	*35.6
Maps are available for inspection at the Kenai Peninsula Borough Planning and Zoning Office, 210 Fidalgo Avenue, Suite 200, Kenai, Alaska. Send comments to The Honorable Mike Navarre, Mayor, Kenai Peninsula Borough, 144 North Binkley, Soldotna, Alaska 99669–7599.					
Louisiana	Ball (Town) Rapides Parish.	Kitchen Creek	At confluence with Flagon Bayou	None	*132
			Approximately 250 feet upstream of confluence of Lateral 1.	None	*151
		City Drainage Ditch	Approximately 250 feet downstream of Kerlin Road.	None	*124
			At Louisiana Highway 1204	None	*162
		Haw Creek Tributary 4	Approximately 600 feet upstream of confluence with Haw Creek.	None	*133
			Approximately 3,400 feet upstream of confluence with Haw Creek.	None	*161
		Haw Creek Lateral 2A	At confluence with Lateral 2	None	*150
			Approximately 1,400 feet upstream of Burma Road.	None	*177
		Haw Creek Lateral 2	Approximately 200 feet upstream of confluence with Haw Creek.	None	*145
			Approximately 1,275 feet upstream of Burma Road.	None	*168

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
		Haw Creek Lateral 1	Just upstream of confluence with Haw Creek.	None	*140
			Approximately 1,700 feet upstream of Hollingsworth Road.	None	*151
		Flagon Bayou Tributary 8	Approximately 1,480 feet downstream of U.S. Highway 165.	None	*117
			Just upstream of U.S. Highway 165	None	*118
		Flagon Bayou	Approximately 11,000 feet downstream of confluence of Flagon Bayou Tributary 3.	None	*120
			Approximately 250 feet upstream of Kansas City Southern Railroad.	None	*141
		Haw Creek	Approximately 300 feet downstream of confluence of Haw Creek Lateral 1.	None	*138
			Approximately 4,100 feet upstream of Burma Road.	None	*169
		Kitchen Creek Lateral 1	Approximately 700 feet downstream of Missouri Pacific Railroad.	None	*141
			Approximately 700 feet upstream of Kitchen Creek Road.	None	*155
Maps are available for inspection at 100 Municipal Lane, Ball, Louisiana.					
Send comments to The Honorable Roy Hebron, Mayor, Town of Ball, 100 Municipal Lane, Ball, Louisiana 71360.					
Louisiana	Farmerville (Town) Union Parish.	Bayou D'Arbonne	Approximately 12,400 feet (2.35miles) Downstream of State Routes 15 and 33.	None	*90
			At State Routes 15 and 33	None	*90
		Middle Fork Bayou D'Arbonne	At State Routes 15 and 33	None	*90
			At confluence of Corney Bayou (located in Union Parish).	None	*90
		Corney Bayou	At confluence with Middle Fork Bayou D'Arbonne (located in Union Parish).	None	*90
			Approximately 3,400 feet upstream of confluence with Middle Fork Bayou D'Arbonne.	None	*90
		Bayou D'Arbonne Lake Tributary 1.	Approximately 5,300 feet downstream of Sterlington Highway.	*87	*90
			Approximately 4,350 feet downstream of Sterlington Highway.	*89	*90
			Approximately 4,400 feet downstream of Sterlington Highway.	*90	*90
		Bayou D'Arbonne Lake Tributary 2.	Approximately 750 feet downstream of Barrom Road.	*88	*90
			Approximately 475 feet downstream of Barrom Road.	*89	*90
			Approximately 500 feet downstream of Barrom Road.	*90	*90
Maps are available for inspection at 407 South Main Street, Farmerville, Louisiana.					
Send comments to The Honorable Willie Davis, Mayor, Town of Farmerville, 407 South Main Street, Farmerville, Louisiana 71241.					
*The shoreline elevation within the Town of Farmerville is now 90 feet NGVD.					
Louisiana	Lincoln Parish (Unincorporated Areas).	Middle Fork Bayou D'Arbonne.	Approximately 26,000 feet downstream of State Route 823.	None	*96
			Just upstream of U.S. Highway 167	None	*101
Maps are available for inspection at 100 West Texas Street, Ruston, Louisiana.					
Send comments to The Honorable Jack Beard, Lincoln Parish President, 100 West Texas Street, Ruston, Louisiana 71270.					
Louisiana	Union Parish (Unincorporated Areas).	Corney Bayou	At confluence with Middle Fork Bayou D'Arbonne.	None	*90
			Approximately 400 feet upstream of U.S. Highway 167.	None	*109
		Middle Fork Bayou D'Arbonne.	At State Routes 15 and 33	None	*90
			Approximately 340 feet upstream of U.S. Highway 167.	None	*111

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
		Ouachita River	Approximately 6,150 feet (1.16 miles) downstream of confluence of Bayou DeLoure.	None	*87
			Approximately 1,550 feet upstream of confluence of Cypress Bayou.	None	*88
		Stowe Creek	At State Route 15	None	*90
			Approximately 140 feet upstream of State Route 151.	None	*114
		Bayou D'Arbonne Lake	At downstream spillway/dam	None	*90
			At State Routes 15 and 33	None	*90
Maps are available for inspection at the 911 Office, 100 East Bayou, Room 206, Farmerville, Louisiana.					
Send comments to The Honorable Richard Bridges, Union Parish President, 303 East Water Street, Farmerville, Louisiana 71241.					
Missouri	Foristell (City) St. Charles County.	Peruque Creek	Approximately 10,570 feet (2 miles) downstream of Stringtown Road [1].	None	*630
			Approximately 5,250 feet downstream of Stringtown Road [1].	None	*646
Maps are available for inspection at the City of Foristell City Hall, 10 Highway T, Foristell, Missouri.					
Send comments to The Honorable Dawn Hiatte, Mayor, City of Foristell, #10 Highway T, Foristell, Missouri 63348.					
Nebraska	Howard County (Unincorporated Areas).	Oak Creek	Approximately 7,200 feet downstream of Union Pacific Railroad.	None	*1,842
			Approximately 1,200 feet upstream of Naper Road.	None	*1,871
		Middle Loup River	Approximately 7,000 feet downstream of County Road.	None	*1,899
			Approximately 4,700 feet upstream of County Road.	None	*1,914
Maps are available for inspection at the Howard County Roads Department, 408 Elm Street, St. Paul, Nebraska.					
Send comments to The Honorable Ron Shuda, Chairman, Howard County Board of Commissioners, P.O. Box 25, St. Paul, Nebraska 68873–0143.					
Oklahoma	Lincoln County (Unincorporated Areas).	West Captain Creek Tributary 1.	Approximately 8,000 feet upstream of confluence with West Captain Creek.	None	*940
			At Oklahoma-Lincoln County boundary	None	*950
Maps are available for inspection at the Lincoln County Commissioners Office, 811 Manvel Avenue, #4, Chandler, Oklahoma.					
Send comments to The Honorable Riley Miller, Jr., Chairman, Board of Lincoln County Commissioners, 811 Manvel Avenue, Chandler, Oklahoma 74834.					
Oklahoma	Newcastle (City) Clain County.	Pond Creek	Approximately 1,450 feet upstream from confluence with the Canadian River.	*1,131	*1,131
			Approximately 800 feet upstream from confluence with Tributary 1 of Pond Creek.	*1,140	*1,141
			Approximately 100 feet upstream from U.S. Route 62 (Main Street).	*1,181	*1,182
			Approximately 5,225 feet upstream from confluence of Tributary 10 of Pond Creek.	*1,243	*1,243
		Tributary 4 of Pond Creek	At confluence with Pond Creek	*1,150	*1,148
			Approximately 400 feet upstream of Fifth Street.	None	*1,241
		Tributary 5.0 of Pond Creek.	At confluence with Pond Creek	*1,156	*1,156
			Approximately 3,100 feet upstream of confluence with Tributary 5.3 of Pond Creek.	None	*1,244
		Tributary 5.1 of Pond Creek.	At confluence with Tributary 5.0 of Pond Creek.	*1,189	*1,190
			Approximately 2,750 feet upstream of State Highway 130 (Fox Lane).	None	*1,260
		Tributary 5.1.1 of Pond Creek.	At confluence with Tributary 5.1 of Pond Creek.	*1,197	*1,200
			Approximately 400 feet upstream from State Highway 130 (Fox Lane).	None	*1,270
		Tributary 5.3 of Pond Creek.	At confluence with Tributary 5.0 of Pond Creek.	None	*1,237

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 710 feet upstream of South 16th Street.	None	*1,265
		Tributary 6.0 of Pond Creek.	At confluence with Pond Creek	*1,162	*1,160
			Approximately 500 feet upstream of North 16th Street.	*1,189	*1,211
		Tributary D of Canadian River.	At confluence with Canadian River	*1,168	*1,169
			Approximately 50 feet upstream of Northwest 16th Street.	None	*1,315
		Tributary D1 of Canadian River.	At confluence with Tributary D of Canadian River.	*1,194	*1,198
			Approximately 150 feet downstream from intersection with Long Drive.	*1,207	*1,206
			At intersection with Long Drive	*1,207	*1,207
Maps are available for inspection at 5 North Main, Newcastle, Oklahoma.					
Send comments to The Honorable George Holmes, Mayor, City of Newcastle, 5 North Main, Newcastle, Oklahoma 73065.					
Oklahoma	Canadian County and Incorporated Areas.	Deer Creek	Immediately upstream of County Line Road.	None	*1,075
			Approximately 1,000 feet upstream of County Line Road.	None	*1,077
		Soldier Creek	Immediately upstream of County Line Road.	None	*1,075
			Just downstream of 32nd Street Northeast (Sara Road).	None	*1,110
		North Canadian River	Just northwest of the intersection of Gregory Road and Chicago, Rock –sland and Pacific Railroad (in south overbank of North Canadian River).	*1,275	*1,282
			Approximately 3,000 feet upstream of Gregory Road.	*1,282	*1,282
Maps are available for inspection at the City of Piedmont City Hall, 314 Edmond Street Northwest, Piedmont, Oklahoma.					
Send comments to The Honorable John Bickerstaff, Mayor, City of Piedmont, P.O. Box 240, Piedmont, Oklahoma 73078.					
Maps are available for inspection at the City of El Reno Community Map Repository, 201 North Choctaw, El Reno, Oklahoma.					
Send comments to The Honorable James Moore, Mayor, City of El Reno, 101 North Bickford, El Reno, Oklahoma 73036.					
Texas	Kerr County and Incorporated Areas.	Stream TC–1	Approximately 2,300 feet downstream of Interstate Highway 10.	None	*1,662
			Just upstream of Interstate Highway 10 ...	None	*1,718
		Stream QC–2	Just downstream of State Highway 16	None	*1,706
			Just upstream of Interstate Highway 10 ...	None	*1,761
		Stream QC–1	Just upstream of Leslie Road	None	*1,688
			Approximately 200 feet upstream of Interstate Highway 10.	None	*1,801
		Quinlan Creek	Just upstream of State Highway 27	*1,606	*1,606
			Approximately 900 feet upstream of Interstate Highway 10.	*1,725	*1,719
		Town Creek	Just upstream of State Highway 27	*1,624	*1,624
			Approximately 200 feet downstream of Schreiner Road.	*1,632	*1,630
			Approximately 900 feet upstream of Interstate Highway 10.	*1,689	*1,689
		Elm Creek	Approximately 600 feet upstream of Goat Creek Road.	None	*1,649
			Approximately 800 feet upstream of Laurel Wood Drive.	None	*1,764
		Camp Meeting Creek	Approximately 500 feet downstream of Preston Trail.	None	*1,592
			Approximately 2,100 feet upstream of Southway Drive.	None	*1,699

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Maps are available for inspection at the Upper Guadalupe River Authority, 125 Lehmann Drive, Kerrville, Texas.					
Send comments to The Honorable Bob Denson, Judge, Kerr County, 700 Main Street, Kerrville, Texas 78028.					
Send comments to The Honorable Jean Raymer, Mayor, City of Ingram, 214 Highway 39, Ingram, Texas 78025.					
Maps are available for inspection at City of Kerrville, 800 Junction Highway, Kerrville, Texas.					
Send comments to The Honorable Charles Johnson, Mayor, City of Kerrville, 800 Junction Highway, Kerrville, Texas 78028.					
Washington	Clallam County (Unincorporated Areas).	Elwha River	Approximately 3,250 feet above mouth	*14	*14
			Approximately 3,800 feet above mouth	*15	*16
			Approximately 5,500 feet above mouth	*20	*24
			Approximately 8,000 feet above mouth	*35	*35
Maps are available for inspection at the Clallam County Planning Department, 223 East Fourth Street, Port Angeles, Washington.					
Send comments to The Honorable Carole Boardman, Chairperson, Clallam County Board of Commissioners, 223 East Fourth Street, Port Angeles, Washington 98362.					
Washington	Lower Elwha Indian Reservation Clallam County.	Elwha River	Approximately 650 feet above mouth	None	*7
			Approximately 7,550 feet above mouth	*33	*34
Maps are available for inspection at the Tribal Center, 2851 Lower Elwha Road, Port Angeles, Washington.					
Send comments to The Honorable Russ Hepfer, Tribal Chairperson, 2851 Lower Elwha Road, Lower Elwha Tribe, Washington 98363.					

[1] Stringtown Road is located in Warren County (Unincorporated Areas), Missouri.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: March 2, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–5762 Filed 3–8–99; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 350

[FHWA Docket No. FHWA–98–4878]

RIN 2125–AE46

Motor Carrier Safety Assistance Program (MCSAP)

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA proposes to amend the regulations governing the Motor Carrier Safety Assistance Program (MCSAP) by incorporating provisions of the Transportation Equity Act for the 21st Century (TEA–21), Pub. L. 105–178, 112 Stat. 107 (1998). This action would broaden the scope of the MCSAP beyond enforcement activities and programs by requiring participating States to assume greater responsibility for improving motor carrier safety. Proposed amendments would require States to develop performance-based plans reflecting national priorities and performance goals, revise the MCSAP funding distribution formula, and create a new incentive funding program. The effect of this action would be to implement the performance-based program requirements of TEA–21 and provide States greater flexibility in designing programs to address national and State goals for reducing the number and severity of commercial motor vehicle (CMV) crashes. Many of these revisions have a congressionally mandated deadline of FY 2000 (October 1, 1999).

DATES: Comments to this NPRM should be received no later than May 10, 1999. Late comments will be considered to the extent practicable.

ADDRESSES: Signed, written comments should refer to the docket number appearing at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. If you desire notification of receipt of comments, include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Brian McLaughlin, Office of Motor Carrier Safety & Technology, (202) 366–9579, or Mr. Charles Medalen, Office of the Chief Counsel (HCC–20), (202) 366–1354, Federal Highway Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): http://dms.dot.gov. It is available 24 hours each day, 365 days each year. Please follow the instructions on-line for more information and help.

You may download an electronic copy of this document using a personal computer, modem, and suitable communications software from the U.S. Government Printing Office Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register** home page at URL: http://www.nara.gov/fedreg and from the U.S. Government Printing Office databases at URL: http://www.access.gpo.gov/nara.

Background

The Motor Carrier Safety Assistance Program (MCSAP) is a Federal grant-in-aid program. It is an outgrowth of a very successful pilot program implemented in a few States in 1980 to reduce truck and bus crash involvement by combining uniform safety inspections with size and weight enforcement activities. The character of the program has evolved from a pilot program to a mature and effective commercial motor vehicle (CMV) safety program with participation by all eligible jurisdictions. The MCSAP was first authorized in the Surface Transportation Assistance Act of 1982 (STAA) (secs. 401–404, Pub L. 97–424, 96 Stat. 2097, 2154) and reauthorized in the Commercial Motor Vehicle Safety Act of 1986 (sec. 12014, Pub. L. 99–570, 100 Stat. 3207, 3207–186) and again in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (secs. 4001–4004, Pub. L. 102–240, 105 Stat. 1914). The original authorization contained certain eligibility requirements for financial assistance, including agreement to adopt and enforce safety regulations compatible with the Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations (HMRs). The regulatory compatibility requirement remains today and ensures a permanent and consistent enforcement and safety presence throughout the nation.

The Motor Carrier Safety Act of 1984 (Title II of Pub. L. 98–554, 98 Stat. 2832, 2838) created the Commercial Motor Vehicle Safety Regulatory Review Panel (Safety Panel) to analyze State CMV safety requirements and develop recommendations on how to achieve compatibility with the Federal regulations. The Safety Panel recommended, in part, that the FHWA establish procedures for the continual review and analysis of the compatibility of State safety laws and regulations with Federal requirements through the MCSAP. Consistent with these recommendations, the FHWA incorporated an annual review process as a MCSAP eligibility criterion. Sec. 208 of the 1984 Act also authorized the Secretary to preempt those State laws and regulations affecting interstate CMV safety found to be inconsistent with Federal laws and regulations. Such a finding would have the effect of rendering inconsistent State laws and regulations unenforceable.

The MCSAP implementing regulations, published in 1984, included two types of grants. Small fixed-amount development grants were available to assist all States in achieving minimum program conditions. Implementation grants, based upon an allocation formula, were available to those States meeting the funding conditions for reimbursement of the Federal share (80 percent) of the cost of eligible enforcement activities. The grant agreement was based on an approved State Enforcement Plan (SEP) detailing activities proposed for the succeeding fiscal year.

The ISTEA reauthorized the MCSAP through FY 1997 and expanded the scope of the program to include CMV safety initiatives beyond the traditional inspection activities (e.g., hazardous materials training, adoption and reporting of uniform truck and bus crash data elements, commercial driver license (CDL) enforcement, and traffic enforcement activities).

The ISTEA also allowed for in-kind contributions by States to be counted toward their matching shares, increased the availability of allocated funds for expenditure by the State to the year of allocation plus one year, and specifically authorized discretionary reallocation of unobligated funds. The regulations implementing ISTEA sought to improve program effectiveness and transform the MCSAP into a more performance-based program by encouraging innovation and initiative by participating States. The regulations established special funding categories rewarding those States designing comprehensive programs for select activities and using their State CMV safety data in identifying critical needs and then developing and implementing specific safety performance outcomes, such as reduced crash rates.

New Legislation

The TEA–21 was signed into law on June 9, 1998. Sec. 4003 of TEA–21 authorizes the MCSAP at the following funding levels from FY 1998 through FY 2003: $79 million for FY 1998, $90 million for FY 1999, $95 million for FY 2000, $100 million for FY 2001, $105 million for FY 2002, and $110 million for FY 2003.

Section 4002 of the TEA–21 adds a new section 31100 to title 49 of the U.S. Code which describes the purpose of the grant program. The goals and directives outlined in that section closely parallel the concepts and principles of a performance-based program. These changes are intended to foster greater coordination and cooperation between State and Federal jurisdictions in improving CMV safety. The changes would also give States more flexibility to address their particular safety issues through the MCSAP. Section 4002 of the TEA–21 also states current program goals of (1) investing in activities achieving maximum crash reductions, (2) assessing and improving statewide program performance by setting program outcome goals, improving information and analysis systems, and monitoring program effectiveness, (3) ensuring adequate training of enforcement personnel, and (4) advancing promising technologies and safe operating procedures.

Section 4003 of the TEA–21 expands the definition of ''commercial motor vehicle'' to include vehicles with a gross vehicle weight (GVW) or gross vehicle weight rating (GVWR) of at least 10,001 pounds. This amendment will simplify enforcement in cases where a vehicle with a GVW of more than 10,001 pounds does not have a corresponding manufacturer's GVWR plate or is being operated in excess of the manufacturer's GVWR. It also revises the hazardous materials portion of the definition of ''commercial motor vehicle'' in 49 U.S.C. 31101 to make it consistent with the ''commercial motor vehicle'' definition in 49 U.S.C. 31132.

A key provision of TEA–21 is the section 4003 requirement that MCSAP participating States implement performance-based CMV safety programs by FY 2000. This provision shifts the emphasis of State programs from measuring activity levels or inputs, (e.g., the number of vehicles inspected) to focusing program effort on outcomes (e.g., reductions in CMV crashes, fatalities, and injuries). States have reacted very positively to this change and all participating MCSAP jurisdictions have implemented performance-based programs.

Section 4003 also revises the grant eligibility criteria and the State plan format to require references to ''improving'' CMV safety and ''hazardous materials'' enforcement. This proposed amendment emphasizes that the principal goal of the MCSAP is being expanded beyond simply enforcing regulations to that of encouraging States to assume the responsibility for finding ways to actively improve CMV safety. It also reinforces the concept that it is equally important to adopt and enforce both the FMCSRs and the HMRs. Additional proposed revisions include (1) establishing programs ensuring proper and timely correction of safety violations noted during roadside inspections, and (2) ensuring that roadside inspections are conducted at locations that will adequately protect the safety of both drivers and enforcement personnel. These provisions would codify and reinforce

longstanding best practices of State CMV safety programs.

The legislation expands existing requirements that State agencies coordinate the Commercial Vehicle Safety Plans (CVSP), originally called the State Enforcement Plan, with the State Highway Safety Plans under 23 U.S.C. 402. The TEA–21 mandates States participating in MCSAP to coordinate the CVSP and data collection and information systems with the State agency administering highway safety programs under title 23, U.S.C. The January 1, 1994, deadline for SAFETYNET participation would be deleted from the regulations since all States have met the requirement. Each jurisdiction receiving MCSAP funding is required to participate in SAFETYNET and other information systems. There is also a new requirement for States to exchange information in a timely manner. These revisions would encourage States and agencies within a State to share best practices and develop broader-based safety programs.

Section 4003(f) of TEA–21 removes the current funding set-asides for research and development, traffic enforcement, hazardous materials training, public awareness, and demonstration of technologies and methodologies. These set-asides were created to encourage uniform State implementation of significant national programs but limited States' flexibility in allocating their MCSAP resources. They are being replaced by new allocation criteria allowing the administrative flexibility needed for States to design programs targeting their unique safety problems as well as meeting national priorities. The new funding allocation allows up to 5 percent of MCSAP funds to be designated for States, local governments and other persons using and training qualified personnel for high priority activities and programs that improve CMV safety and compliance with safety regulations. Up to 5 percent of MCSAP funds will also be available to States, local governments, and other persons using and training qualified personnel to carry out border CMV safety programs, enforcement activities, and projects. The Secretary may also reimburse State agencies, local governments, or other persons up to 100 percent for public education activities relating to border or high priority activities, programs, and projects.

The overall MCSAP would consist of four parts:

1. *Basic Program Funds* emphasizing uniform roadside driver and CMV safety inspections, data collection and reporting, traffic enforcement, drug and alcohol enforcement, educational activities, compliance reviews, and current complementary activities. These funds would include a performance factor that redistributes some Basic Program Funds to States that achieve improved CMV crash performance.

2. *Incentive Funds* that encourage States to improve CMV crash performance and to meet other safety performance criteria.

3. *High Priority and Border Activity Funds.*

4. *Administrative set-aside* of 1.25 percent to cover program administration and State personnel training costs.

The Proposal

The purpose of this proposal is to (1) improve the effectiveness of the MCSAP by implementing performance-based, results-oriented programs, (2) implement TEA–21 revisions to the MCSAP, (3) provide an improved grant distribution scheme which supports and enhances the performance-based concept and rewards States for their safety program improvements, (4) rewrite the MCSAP regulations to be consistent with our zero-base efforts to eliminate redundancy and clarify requirements, (5) define key terms such as ''performance-based program,'' ''Basic Program Funds,'' ''Incentive Funds,'' ''national program elements,'' ''traffic enforcement'' as it pertains to the MCSAP, and (6) make other conforming amendments reflecting changes in the law and new program direction.

Format Changes to the MCSAP Regulations

In 1992, the FHWA initiated a complete review of the FMCSRs, a process known as a zero-base initiative, to revise and reformat the regulations. The majority of these revised regulations will be published as a separate NPRM in the near future. Because of the importance of the MCSAP grant program to State CMV safety enforcement efforts, these revised regulations are being separately proposed at this time. Consistent with this effort, the existing Appendix A—Guidelines To Be Used in Preparing State Enforcement Plan, Appendix B—Form of State Certification, and Appendix C—Tolerance Guidelines for Adopting Compatible State Rules and Regulations, would be eliminated and the pertinent information would be incorporated into the corresponding sections of the new, proposed regulatory text.

The FHWA has made a special effort to ensure that the language used in this proposal is logically presented, clearly formatted, and easily understood. The following three techniques have been used:

1. *Question and Answer Format:* The FHWA constructed the proposed rules so that each section heading asks a question, and the answer to the question becomes the regulatory requirement.

2. *The Active Voice:* A sentence constructed using the active voice is usually easier to understand than one using the passive voice.

3. *''Plain English'':* On October 4, 1993, the President issued Executive Order 12866, stating ''all information provided to the public by the agency shall be in plain, understandable language.'' (Section 6(a)(3)(f)). This proposal uses basic English and simple sentence structure. We have minimized the use of complex, technical, and legal terms as much as possible and adopted a more conversational writing style.

Consolidation of Appendices

The proposal incorporates into the rule text what is currently set apart in Appendices A, B, and C.

The following table shows where each section of the current regulations would appear in the new format:

PART 350.—COMMERCIAL MOTOR CARRIER SAFETY ASSISTANCE PROGRAM

Current regulation	Proposed regulation
350.1—Purpose	350.103
350.3—Definitions	350.105
350.5—Policy	350.101
350.7—Objective	350.101
350.9—Conditions for basic grant approval	350.107, 350.201
350.11—Adopting and enforcing compatible laws and regulations (generally):	
350.11(a)	350.201(a)

PART 350.—COMMERCIAL MOTOR CARRIER SAFETY ASSISTANCE PROGRAM—Continued

Current regulation	Proposed regulation
350.11(b)	350.331(c)
350.11(c)	Removed.
350.11(d)	350.105 (compatible/compatibility)
350.11(e)	350.203
350.11(f)	350.331(d)
350.11(g)	350.173
350.11(h)	350.335(a)
350.11(i)	350.335(b)
350.13—State Enforcement Plan (SEP) for a basic grant	350.213
350.15—Certification of compliance by State	350.209
350.17—Maintenance of effort	350.301
350.19—Grant application submission	350.205
350.21—Distribution of funds:	
350.21(a)	350.303
350.21(b)	350.305
350.21(c)	350.323(a)
350.21(d)	350.323(b)
350.21(e)–(f)	350.313, 350.315, 350.317, 350.319, 350.321, 350.323, 350.325, 350.327, 350.329
350.21(g)	350.307
350.23—Acceptance of State plan	350.205, 350.207
350.25—Effect of failure to submit a satisfactory State plan	350.205, 350.207
350.27—Procedure for withdrawal of approval	350.215
350.29—Eligible costs	350.311, 350.315
350 App A—Guidelines To Be Used in Preparing State Enforcement Plan.	350.213 The SEP has been renamed the Commercial Vehicle Safety Plan (CVSP).
350 App B—Form of State Certification	350.211
350 App C—Tolerance Guidelines for Adopting Compatible State Rules and Regulations:	
paragraph 1	Removed.
paragraph (2)(a)	350.337
paragraph (2)(b)	350.337
paragraph (3)(a)	Removed.
paragraph (3)(b)	350.341(a)
paragraph (3)(c)	350.341(b)
paragraph (3)(d)	350.341(c)
paragraphs (3)(d)(1)–(d)(11)	350.343
paragraph (3)(e)	350.341(d)
paragraph (3)(f)	350.341(e)
paragraph (3)(g)	350.341(f)
paragraph (3)(h)	350.341(g)
paragraph (3)(i)	350.341(h)
paragraph (3)(j)	350.203

Substantive Program Changes to the MCSAP Regulations

This section introduces new and revised terms for the MCSAP program and discusses proposed changes affecting the character of the MCSAP program.

Definitions

Removals: The term ''basic allocation'' would be removed and replaced by either the term ''Basic Program Funds'' or ''Incentive Funds.'' The term ''basic grant'' would be removed and replaced by the term ''Basic Program Funds.''

Additions: Five new terms are proposed and would be defined under § 350.105: ''Basic Program Funds,'' ''Border Activity Funds,'' ''High Priority Activity Funds,'' ''Incentive Funds,'' ''North American Standard Inspection,'' and ''Performance Factor.''

Revisions: Three terms would be revised. The term ''commercial motor vehicle'' (CMV) would be broadened to include vehicles with a gross vehicle weight (GVW), gross vehicle weight rating (GVWR), gross combination weight (GCW), or gross combination weight rating (GCWR) of at least 10,001 pounds. The definition would also include CMVs hauling placardable amounts of hazardous materials as described in the HMRs (49 CFR part 172, subpart F). This proposal would match the hazardous materials portion of the definition of a CMV found in 49 U.S.C. 31132.

The term ''compatible/compatibility'' would reflect new regulations of the Research and Special Programs Administration requiring transporters of hazardous materials to comply with the HMRs for both interstate and intrastate operation.

MCSAP Changes

With the enactment of TEA–21, the Congress has endorsed and promoted the performance-based approach to MCSAP by all but eliminating activity-specific funding set-asides from previous legislation. The TEA–21 creates two new funding categories within the MCSAP:

High Priority Activities and Projects

The proposed rule would define this category as national program activities designed to improve CMV safety and compliance with CMV safety regulations, including public awareness efforts, education, and technology demonstration. The Secretary may designate up to 5 percent of available MCSAP funds each year for this purpose.

The proposed high priority funding allocation would allow the FHWA to continue funding uniform national

emphasis area programs while allowing States to allocate formula funds to address their own most pressing safety problems. The TEA–21 ensures that high priority funds can be awarded to States, local governments, and other persons that use and train qualified officers and employees in coordination with State CMV safety agencies, through grants, contracts, and cooperative agreements. Should High Priority Activity Funds be available in a given fiscal year, the FHWA will solicit grant proposals from the States.

Border Commercial Motor Vehicle Safety and Enforcement Programs

The new legislation establishes funding for border activities to provide national resources to assist States along the nation's borders with the added safety responsibilities they face with the full implementation of the NAFTA. The Secretary may designate up to 5 percent of available amounts for the MCSAP allocation in a fiscal year for States, local governments, and other persons for carrying out CMV safety programs and enforcement activities and projects at the borders of the United States. These amounts would be allocated to State agencies, local governments, and other persons that use and train qualified officers and employees in coordination with State CMV safety agencies.

Commercial Vehicle Safety Plan (CVSP)

The FHWA proposes to change the requirements relating to what a State would include in the CVSP in order to reflect a performance-based program. The TEA–21 eliminates the current statutory requirement that States enact an out-of-service (OOS) verification program. Instead, States would be required, as part of the CVSP, to certify that they have a process in place for timely and proper correction of all CMV safety violations noted during inspections. States would also be required to ensure that all inspections are conducted in locations that adequately protect the safety of both drivers and enforcement personnel. The new CVSP format would incorporate these provisions into the CVSP Certification. States would be required to expand their current practice of coordinating the State CVSP with the Highway Safety Plan developed under 23 U.S.C. 402. The TEA–21 requires that States coordinate their plan, data collection, and information systems with State highway safety programs under title 23, U.S.C. The FHWA strongly encourages State MCSAP agencies to take a leadership role in coordinating planning, data collection, and information systems with State highway safety programs under title 23. The guidelines for preparing the CVSP would be removed from appendix A to Part 350 and incorporated into the regulatory text of § 350.213.

Adoption and Implementation of Performance-Based Programs

The TEA–21 also requires that all States adopt and implement a performance-based MCSAP by the year 2000. This mandate has already been achieved because participating States began developing performance-based, results-oriented programs and CVSPs in FY 1998. The FHWA recognizes and emphasizes that adopting a performance-based grant program is an evolutionary process requiring continual improvement and enhancement.

States have always been required to include an evaluation of their program in the annual safety plan. For the most part, success was measured by the number of activities conducted rather than outcomes achieved. Even though these evaluations helped States identify program improvements, a results-oriented program would better enable States to identify problems and develop effective solutions. Adopting a performance-based program gives the added benefit of allowing a State to better support program decisions and more accurately measure the effectiveness of individual activities and the overall program.

The following is a discussion of key sections proposed for the CVSP:

State Agency Goal or Mission—This section would contain a brief statement describing the mission of the MCSAP lead agency.

Program Evaluation—This section would contain a comprehensive evaluation of the effectiveness of prior years' program activities as defined by the State. The evaluation period should be at least 2 years and could be up to 5–10 years. States would describe the methodology and results of the evaluation. States would comprehensively discuss progress toward individual performance objectives listed under the ''Objectives'' section of the previous years' CVSP and identify any safety or performance problems discovered. States would identify those problems in the new or modified CVSP. The discussion would set forth the original problem, the intended objectives (activities and strategies), performance measures achieved, recommended modifications to the CVSP, if any, and the actual final outcome. States may carry over objectives from one year to the next. However, modified or new objectives would have to be discussed in the new or modified CVSP and approved before implementation. The State would need to identify the specific period defined in its evaluation discussion (e.g., 2 years, 5 years, etc.).

The issue of what period of time must or should be covered by States in a program evaluation has created confusion for many years. In order to assess progress in achieving safety goals, States must have a process to measure the impact of their program efforts. In past years, many States have indicated that they could not provide evaluation data for the previous fiscal year's program activities in the current year CVSP. States indicated this could not be done either because program activities were still underway or that program data had not yet been fully collected, processed, or evaluated. This led to CVSPs containing limited evaluation data.

What the agency proposes with this rule is for States to provide trend data in their CVSP as a means of evaluating program progress made to date. Ideally, these evaluations would include a breakdown of impact by fiscal or calendar year. In the absence of available data for the year immediately preceding the current CVSP, the agency requests that the States include trend analysis for the program area in question using the most current data available.

National Program Elements—Each CVSP would address, in a performance-based manner, the national elements described in § 350.109: (a) driver/vehicle inspections, (b) traffic enforcement, (c) compliance reviews, (d) public education and awareness, and (e) data collection and upload. Even if a State plans no activities for a given element, it would be required to explain the basis for that resource allocation.

Problem Statement—This would be a brief, yet definitive, statement for each identified safety or performance problem to be addressed in the plan. The statement would be supported by data or other information. States would provide specific detail about what is contributing to or causing the problem (if known), or whether further research is needed to identify these factors. A hypothetical problem statement follows: ''The 1997 Inspection System Report indicates that 30 percent of inspection reports for the State were rejected. We have determined that the error rate was caused because inspectors improperly recorded U.S. DOT identification numbers, resulting in an inability to match the inspection with a known carrier (non-match).''

Performance Objectives—This section would clearly tie the objectives of the plan to the problems identified. Each objective would clearly state, in measurable terms, what the plan intends to accomplish. Objectives would be realistic and have an adequate time frame for achievement. Here is an example of a performance objective for the hypothetical problem statement above: ''Decrease the non-match rate for the State inspection reports to 20 percent or less in FY 99.''

Strategy—This section would describe the general, measurable method(s) to be used to accomplish each objective. Here is an example of a strategy for the hypothetical performance objective above: ''Improve inspectors'' knowledge of proper carrier identification and recording procedures.''

Activity—States would specify how they intend to use resources to implement the strategy identified above. Here are three sample activities for the hypothetical strategy above: (1) Send 30 inspectors to the ''Inspection Recording Techniques'' training class conducted by the National Training Center by 9/30/99, (2) Use laptop and OMC inspection software, (3) Provide ''supervised'' inspection activities (on-the-job training), and (4) Provide all inspectors with training in carrier identification techniques.

Performance Measures—This section would list quantitative guides used to rate the progress and effectiveness of the program. These guides would be listed for individual elements of the CVSP or the overall plan. This information would be used for on-going program monitoring and the annual evaluation. An example of a performance measure is ''Thirty inspectors complete Inspection Recording Techniques training by 9/30/99.''

Performance Monitoring—This section would discuss the method the State would use to monitor how effectively the CVSP is being implemented. The State would clearly designate (1) who will monitor the CVSP, (2) how frequently the plan will be monitored, (3) to whom reports would be submitted, and (4) how reports will be submitted. The information derived from this process would demonstrate the State's progress toward achieving its objectives, provide a tool for improving the plan, and provide interim data for evaluation.

Resources—States would provide a comprehensive description of all resources required to accomplish proposed objectives. Resources would be consistent with eligible expenses under § 350.311, including personnel, equipment, materials and supplies, information systems, and contractual services needed to accomplish those objectives. States would describe resources and estimate the total dollar expense. States are encouraged to be creative and consider joint ventures with other States as well as using existing Federal government, university, and commercial resources.

Additional Activities—This section would indicate, in a performance-based manner, planned enforcement activities in which the State is involved (e.g., vehicle size and weight, alcohol/controlled substance checks, drug interdiction).

Local Jurisdictions

This NPRM provides a process for making High Priority and Border Activity Funds available to local jurisdictions as well as lead MCSAP State agencies. This provision could enhance MCSAP effectiveness by providing additional enforcement and safety resources in every State. The FHWA has long considered local agency participation to be critical in improving enforcement/compliance activities and building a uniform enforcement presence throughout the nation. This proposed provision is not intended to enable local agencies to circumvent lead agency authority. The FHWA would require local agencies to coordinate activities with the lead State MCSAP agency, to the extent practicable, in order to ensure national and State program uniformity and sharing of best practices. The FHWA would provide grants directly to local agencies only in cases where it is not possible to work through the lead MCSAP agency. It is critical that inspections and other compliance or enforcement activities be conducted uniformly. Therefore, we would require local agencies and MCSAP agencies to coordinate development of the CVSP and implementation of program activities. The basic conditions being proposed for local agencies to qualify for these funds are consistent with the conditions established for the State's MCSAP agency.

Improved Allocation Formula and Processes

The same five formula factors, updated yearly, have been used to allocate Basic Program Funds since the beginning of the MCSAP in 1984. The national motor carrier safety program is being restructured to focus on strategic safety investments, increased flexibility for grantees, updated information systems and analysis, and improved driver programs. The Basic Program Funds allocation formula is used to determine the amount of funds the States participating in the MCSAP are eligible to receive. While the reauthorization of the program was pending, the FHWA reexamined the formula to explore possible changes to the factors to reflect and support a performance-based approach.

During the reauthorization process, the Congress supported the use of performance as a criterion for allocating MCSAP funds. The FHWA, therefore, proposes to link some portion of this formula funding to safety performance. To minimize program disruption in the States, the FHWA recommends a gradual transition from allocating essentially all MCSAP funds based upon formula factors to allocating a portion of MCSAP funds to States based upon their CMV safety performance. For example, after deducting the high priority, border, and administrative takedown funds, in the year 2000, 90 percent of the remaining appropriated funds will be allocated as Basic Program Funds according to the formula. The remaining 10 percent of the funds available for allocation will be placed in an incentive account from which States will receive additional funds based on safety improvements. In the year 2001, to encourage continued improved safety performance, the split is proposed at 85 percent for the Basic Program Funds and 15 percent for the Incentive Funds. In the year 2002, the split is proposed at 80 percent and 20 percent. In 2003, the split is proposed at 75 percent and 25 percent. The following chart sets forth the proposed allocation of MCSAP funds for a 4-year period.

PROPOSED MCSAP FUNDS DISTRIBUTION

Fiscal year	2000	Percent	2001	Percent	2002	Percent	2003	Percent
Total MCSAP Funds	$95,000,000		$100,000,000		$105,000,000		$110,000,000	
Administrative Takedown	1,187,500		1,250,000		1,312,500		1,375,000	
High Priority Activities	4,750,000		5,000,000		5,250,000		5,500,000	
Border Activities	4,750,000		5,000,000		5,250,000		5,500,000	

PROPOSED MCSAP FUNDS DISTRIBUTION—Continued

Fiscal year	2000	Percent	2001	Percent	2002	Percent	2003	Percent
Basic Program Funds	75,881,250	90	75,437,500	85	74,550,000	80	73,218,750	75
Incentive Funds	8,431,250	10	13,312,500	15	18,637,500	20	24,406,250	25

Incentive Funds would be used to reward those States achieving improved safety performance or that meet specified safety performance criteria.

The MCSAP Formula Workgroup

In 1997, the FHWA convened a MCSAP Formula Workgroup. The Workgroup was comprised of OMC representatives from each of the nine FHWA Regions, FHWA Headquarters, and a team from Oak Ridge National Laboratory. This Workgroup had the following five objectives:

1. Review the current Basic Program Funds formula and its factors in a historical context of fairness, equity, and safety impact.
2. Understand the needs of each of the States and Territories and provide an analytical approach to the reexamination of the formula.
3. Consider potential new factors and evaluate their impact upon recipients of MCSAP funds.
4. Discuss options for building safety performance measurements into the process of apportioning funds to the States.
5. Produce a Basic Program Funds formula which more effectively apportions the available funds as fairly as possible as an incentive for improved CMV safety performance.

During the most recent Basic Program Funds formula review, the Workgroup re-examined the five current formula factors (road mileage, vehicle miles traveled, registrations, population, and fuel consumption). Each factor was examined for reliability, stability over time, and for correlation with other factors to ensure that they were not redundant. The Workgroup found that truck registration data do not measure CMV activity, because vehicles may be registered in one State but operate primarily in another State. The Workgroup also recognized that CMV registration often reflects where registration costs are the lowest, rather than where the vehicle is operated. Furthermore, the quality of registration data is suspect since vehicle registration numbers can fluctuate greatly year by year. The four remaining factors were considered valid because they continue to provide a measure of overall traffic volume, indicate the potential for crashes, relate to motor carrier activity levels, are easy to understand, and are derived from reliable sources. The Workgroup also decided that annual population estimates issued by the U.S. Bureau of the Census are preferred to the decennial census because the annual figures more accurately represent the current population and its gradual change over the years does not cause extreme fluctuation of the funding allocation.

Potential New Factors

The Workgroup discussed a large number of potential Basic Program Funds formula factors. These factors were identified in an attempt to better and more fairly quantify the level of CMV activity within any given State or Territory. The following sixteen potential formula factors were considered and ultimately rejected for the reasons provided.

1. Cost of Living. Proposed funding increases need to be driven by CMV safety program requirements rather than the general condition of the U.S. economy.
2. Intelligent Transportation System (ITS) activities. MCSAP funds are safety enforcement-oriented. Other funding sources are available to develop new technology.
3. Intermodal Activities. There are no reliable data sources available at the current time.
4. Number of CMV Crashes. The Motor Carrier Management Information System (MCMIS) crash file is not yet sufficiently populated to be considered ready for rigorous use as a funding factor.
5. Number of Commercial Buses. There is no reliable source of data at this time.
6. Number of Commercial Driver's Licenses (CDL). The current system does not purge records of inactive drivers, creating difficulty in establishing an accurate count of active CMV drivers.
7. State Contribution/Effort. This factor is a very difficult number to quantify and verify.
8. Land Area. Land area was not considered to be a fair factor because larger geographical areas do not necessarily represent more motor carrier activity.
9. Commercial Truck VMT. This factor is not easy to derive from ''Highway Statistics'' data since that publication reports the total VMT of all vehicles. Neither the International Registration Plan (IRP) nor the International Fuel Tax Agreement (IFTA) can be used as a source of data because they currently lack uniformity and consistency.
10. Hazardous Materials. It is very difficult to establish a reliable, easily verifiable number of motor carriers.
11. Number of Commercial Motor Carriers. The MCMIS carrier census file does not contain information on the number of intrastate motor carriers. It is difficult to derive the number of intrastate motor carriers within a State using the MCMIS and other data sources (e.g., the Truck Inventory and Use Survey [TIUS]).
12. Lane Miles. Lane miles are highly correlated with road miles which is a well-understood current factor.
13. Miles of Interstate Highways. Interstate miles are also highly correlated with road miles.
14. Miles of National Highway System (NHS). NHS miles are also highly correlated with road miles. The category, however, is too restrictive by itself to be a factor.
15. Three-year Moving Average of Population Estimates. The annual population estimates are easier to use and more accurate and verifiable.
16. Traffic Density Index. Traffic density was defined by VMT/road miles, VMT/lane miles, and commercial VMT/lane miles. All three definitions were tested. Analysis suggested that the traffic density index at the State level does not accurately reflect the potential for crash involvement.

Proposed Allocation Formula

After extensive analysis, the Workgroup proposed that the following four factors be included in the Basic Program Funds formula for determining funds allocation to the States:

1. Road Miles. This factor measures crash exposure, is easily understood, applies to all types of vehicles, is very stable over time, and is recognized by the States.
2. Total vehicle miles traveled (VMT). This is acceptable for the same reasons listed in number 1.
3. Annual population estimates. Population is a factor which is recognized by the States. The annual estimates are preferred because they are highly correlated to the decennial

census yet most accurately reflect population sizes each year versus every 10 years.

4. Special fuel consumption. This factor reflects the level of motor carrier activity within a State, is derived from an audited program for all States, and is based on actual fuel usage within a State.

The Workgroup recommends that each factor be equally weighted at 25 percent. The rationale for this decision is that the resulting MCSAP allocations would likely correlate with the crash rates reported by the Fatal Analysis Reporting System (FARS). The formula, using four factors equally weighted, would allocate the greatest share of formula funds to the States with the largest number of crashes, and would provide funding levels largely consistent with current formula allocations.

In order to achieve a balanced program and ensure every State is afforded an opportunity to participate in the MCSAP, the apportionment formula was adjusted for maximum and minimum allocations. The ceiling amount was held at 4.944 percent of the total amount available for allocation. The Territories receive a fixed amount of $250,000 (their 1996 formula funding level without the Traffic Enforcement and Hazardous Materials earmarked funds). The minimum allocation for the States and Puerto Rico was raised to $350,000 or 0.44 percent of the formula funds available for allocation, whichever is greater. The rationale for setting higher minimum allocations for the States and Puerto Rico than for the Territories is because the Territories have low population levels, road miles, and VMT (no statistics are provided for special fuel consumption).

The FHWA proposes a Basic Program Funds allocation formula based upon the four equally-weighted factors computed considering maximum and minimum limits.

Performance Factor

After calculating a State's Basic Program Funds using the formula, the FHWA proposes to adjust the State's basic program funding level by applying a factor based upon a State's performance in reducing its CMV crash rate. ''Crash rate'' is defined as the number of fatal crashes involving large CMVs, as measured by the FARS, divided by the State's annual population estimate. If the crash rate for the most recent calendar year for which data are available exceeds the individual State's 10-year average crash rate, the State's Basic Program Funds allocation would be decreased by the amount that the crash rate increased, up to a maximum penalty of 1 percent for each consecutive year of increase in the State crash rate.

The methodology for incorporating the performance factor would be as follows:

1. For the FY 2000 distribution, the FHWA would calculate a State's 10-year average crash rate period from 1988 through 1997. The 10-year average crash rate would be calculated by dividing [the number representing the State's aggregate number of large truck involved fatal crashes as reported in FARS from 1988 through 1997] by [the number representing the State's aggregate annual population estimate as reported by the U.S. Census Bureau for the same 10-year period].

$$\frac{\text{aggregate large truck fatal crashes}}{\text{aggregate annual population estimates}} = [\text{10-year average crash rate}]$$

2. The FHWA would then calculate the State's 1998 crash rate. The formula would be as follows:

$$\frac{\text{1998 FARS large truck fatal crashes}}{\text{1998 Census population estimates}} = [\text{1998 crash rate}]$$

3. If a comparison reveals the State's crash rate has increased, the State would be penalized by the amount representing the rate of increase. For example, if the 10-year average crash rate for the period from 1988–1997 is .001865, and the 1998 crash rate is .001878, the factor would be calculated as follows: .001878 minus .001865 equals .000013 The number .000013 divided by .001865 times 100 equals 0.70 percent. The State would, therefore, lose 0.70 percent of its FY 2000 Basic Program Funds. The maximum forfeiture for FY 2000 would be 1 percent.

$.001878 - .001865 = .000013$

$.000013 \div .001865 \times 100 = .70\%$ increase in rate

4. If a comparison reveals that the crash rate has decreased, the State would be eligible for an upward adjustment of its Basic Program Funds allocation. The funds forfeited by States under the performance adjustment would be redistributed equally among those States where the crash rate improves. These adjustments would be made prior to distribution of funds.

5. The performance factor would limit the penalty for a State with an increased crash rate to no more than 1 percent for each consecutive year the crash rate increased. For example, if a State were to experience an increase in crash rate in year 1, the penalty would be a maximum of 1 percent. If in year 2, the State crash rate remained level with year 1, the State would receive its full Basic Program Funds allocation. If in year 2, the State crash rate went down, the State would receive the full Basic Program Funds allocation plus an upward adjustment to reflect its improved crash rate. If in year 2, the crash rate went up, the State would lose a maximum of 2 percent. If the crash rate continues to be above the 10-year average rate in consecutive years, the maximum forfeiture will increase to 2 percent, 3 percent, and 4 percent, in the second, third, and fourth occurrences, respectively.

6. The calculations in steps 1 through 5 would be repeated in FY 2001 through 2003, adjusting the variables as follows:

Calculation year	Ten-year variable	Most recent data year variable	Maximum penalty cap (percent)
2001	1989–1998	1999	2
2002	1990–1999	2000	3
2003	1991–2000	2001	4

Incentive Funding

The primary objective of the MCSAP is to reduce CMV-involved crashes and resultant fatalities, injuries, and property damage. The agency is using a performance-based approach to encourage grant recipients to improve highway safety performance. To that end, the FHWA proposes to reward those States that reduce CMV-involved fatal crashes, CMV-involved fatal crash rates, and/or have programs that meet specified safety performance criteria. Eligibility for Incentive Funds is not conditioned upon the results of the performance factor computation. Incentive Funds would be awarded as follows:

1. Reduction of CMV-involved fatal crashes. States achieving any reduction would be awarded five shares.

2. Reduction of CMV-involved crash rates. States reducing the CMV-involved crash rate would be awarded four shares.

3. Timely reporting of CMV crash data within FHWA policy guidelines. States uploading CMV crash reports within policy guidelines would be awarded three shares.

4. Status verification of all CDLs through the Commercial Driver's License Information System (CDLIS), National Law Enforcement Telecommunication System (NLETS), or State licensing authority as part of the State inspection process. States certifying that all CDLs are verified as part of the vehicle/driver inspection process, through CDLIS, NLETS, or the State licensing authority, would be awarded two shares.

5. Reporting of inspection data within FHWA policy guidelines. States uploading CMV inspection reports within policy guidelines would be awarded one share.

The total of all States' shares would be divided into the dollar amount of Incentive Funds available, thereby establishing the value of one share. Each State's incentive allocation would then be determined by the number of shares it has received that year.

The FHWA would assist States in finalizing the MCSAP budget request by estimating the potential Incentive Funds available to them for the upcoming fiscal year.

Compatibility

In addition to the annual regulatory review for compatibility of State laws and regulations required to be submitted with the CVSP, the FHWA is proposing to require a State to submit, within 30 days after enactment, to the appropriate FHWA field office for review, a copy of any law or regulation affecting CMV safety. The FHWA is also proposing to eliminate the current tolerances in Appendix C, Paragraph 2(a) related to hazardous materials enforcement. As of October 1, 1998, the HMRs are applicable to transportation of hazardous materials by highway, and departmental policy is to promote the full involvement of State CMV safety enforcement resources in ensuring compliance with these regulations. Therefore, all States will be required to achieve full compatibility for both interstate and intrastate hazardous materials transportation within three years after the effective date of October 1, 1998.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated at the beginning of this document will be considered and will be available for examination in the docket at U.S. DOT Dockets, room PL–401, 400 Seventh Street, SW., Washington, D.C. 20590–0001 or using the Department of Transportation Docket Management System located at the Internet address http://dms.dot.gov. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will also continue to file relevant information that becomes available after the comment closing date in the docket. Interested persons should continue to examine the docket for new material. Nevertheless, the FHWA may issue a final rule at any time after the close of the comment period.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this document does not constitute a significant regulatory action for the purposes of Executive Order 12866 or a significant regulation under the regulatory policies and procedures of the DOT. These proposed changes to the FMCSRs would not cause an annual impact on the economy of over $100 million, and they would not adversely affect a sector of the economy in a material way. These changes would not create an inconsistency or otherwise interfere with another agency's actions, nor do they raise novel legal or policy issues. These changes merely implement a recently enacted legislative mandate directing the FHWA to amend its regulations pertaining to the MCSAP. This NPRM proposes to broaden the scope of the MCSAP beyond enforcement activities and programs by requiring participating States to assume greater responsibility for improving motor carrier safety. It proposes to revise the MCSAP funding distribution formula, create a new incentive funding program, and require States to develop performance-based CMV safety plans. Thus, in light of this analysis, especially the finding that the economic impact of this action is likely to be minimal, the FHWA has determined that a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. It is anticipated that this rulemaking will have little or a non-significant impact upon small entities. The proposed changes merely implement TEA–21 provisions pertaining to the MCSAP affecting only States and local jurisdictions. This NPRM provides a process for making high priority activity, border activity, and information system funds available to local jurisdictions as well as MCSAP agencies. The basic conditions being proposed for local agencies to qualify for these funds are consistent with the conditions local agencies must follow now to receive funds through the MCSAP agency. The number of local agencies that would receive direct funding would be minimal since the FHWA would provide grants directly to local agencies only where it is not possible to work through the lead MCSAP agency. In all circumstances, the local agencies would not be required to participate unless they found that it was in their best interest. Therefore, the

FHWA hereby certifies that this proposed action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

This proposed rule would not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532).

Executive Order 12612 (Federalism Assessment)

This action has been analyzed using the principles and criteria contained in Executive Order 12612. The proposed changes would implement TEA–21 provisions. The MCSAP is a grant-in-aid type program whereby Federal financial assistance is provided to States. The basic nature of the program and the level of total funding for the program are not affected by these proposed changes. The proposed changes do not limit the policy making discretion of the States. Therefore, this rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program. Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety.

Paperwork Reduction Act

This rulemaking does not impose new information collection requirements. The only potential change to the existing information collection requirement would be the number of affected parties. These changes will be submitted to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

Title: Motor Carrier Safety Assistance Program (MCSAP).

OMB Number: 2125–0536.

Affected Public: State MCSAP lead agencies and local jurisdictions seeking MCSAP funding.

Abstract: Sections 401–404 of the Surface Transportation Assistance Act of 1982 (STAA) established a program of financial assistance to the States' implementation of programs for the enforcement of (a) Federal rules, regulations, standards, and orders applicable to commercial motor vehicle safety and (b) compatible State rules, regulations, standards, and orders. This grant-in-aid program is known as the Motor Carrier Safety Assistance Program (MCSAP). The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) added programs, such as drug interdiction, traffic enforcement, and size and weight activities conducted in conjunction with CMV inspections to the core program established by the STAA. Sections 4002 and 4003 of the Transportation Equity Act for the 21st Century (TEA–21) further enhance the MCSAP by increasing enforcement activities in key areas where the primary responsibility for CMV enforcement falls upon local agencies. This NPRM proposes to make special allocation grants for high priority activities and projects or border activities available to local agencies in addition to MCSAP State lead agencies. State and local jurisdictions applying for the MCSAP are required to submit a Commercial Vehicle Safety Plan, a certification that their laws and regulations are compatible with the FMCSRs and HMRs, and periodic evaluations of their program to the FHWA.

Need: This information is necessary to enable the FHWA to determine whether a State or local agency meets the statutory and administrative criteria to be eligible for a grant. It is necessary for activities and accomplishments to be reported so that FHWA may monitor and evaluate an agency's progress under its approved plan and make the determinations and decisions required by 49 CFR 350.

Estimated Total Annual Burden: 14,498 hours.

Comments: Comments concerning the paperwork burden and burden hour estimates in this proceeding may be directed to OMB and the FHWA, respectively, by addressing them to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 and Federal Highway Administration, Forms Clearance Officer Earl Coles (HMS–12), Office of Information and Management Services, 400 Seventh Street, SW., Washington, DC 20590.

National Environmental Policy Act

The agency has analyzed this action for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and it has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 350

Grant programs—transportation, Highway safety, Motor carriers, Motor carrier safety.

Issued: February 24, 1999.

Kenneth R. Wykle,

Administrator, Federal Highway Administration.

In consideration of the foregoing, the FHWA amends title 49, Code of Federal Regulations, chapter III, as follows:

1. Part 350 of chapter III of title 49, Code of Federal Regulations, is revised to read as follows:

PART 350—COMMERCIAL MOTOR CARRIER SAFETY ASSISTANCE PROGRAM

Subpart A—General

Sec.

350.101 What is the Motor Carrier Safety Assistance Program (MCSAP)?
350.103 What is the purpose of this part?
350.105 Definitions used in this part.
350.107 What jurisdictions are eligible for MCSAP funding?
350.109 What are the national program elements?
350.111 What constitutes ''traffic enforcement'' for the purpose of the MCSAP?

Subpart B—Requirements for Participation

350.201 What conditions must a State meet to qualify for Basic Program Funds?
350.203 What happens to a participating State's Basic Program and Incentive Funds if it adopts an incompatible law or regulation?
350.205 How and when does a State apply for MCSAP funding?
350.207 What response does a State receive to its CVSP submission?
350.209 How does a State demonstrate that it satisfies the conditions for Basic Program funding?
350.211 What is the format of the certification required by § 350.209?
350.213 What must a State CVSP include?
350.215 What are the consequences of a State failing to perform according to an approved CVSP or otherwise failing to meet the conditions of this part?

Subpart C—Funding

350.301 What level of effort must a State maintain to qualify for MCSAP funding?
350.303 What are the State and Federal shares of expenses incurred under an approved CVSP?

350.305 Are U.S. Territories subject to the matching funds requirement?
350.307 How long are MCSAP funds available to a State?
350.309 What activities are eligible for reimbursement under the MCSAP?
350.311 What specific items are eligible for reimbursement under the MCSAP?
350.313 How are MCSAP funds allocated?
350.315 How may Basic Program Funds be used?
350.317 What are Incentive Funds and how may they be used?
350.319 What are permissible uses of High Priority Activity Funds?
350.321 What are permissible uses of Border Activity Funds?
350.323 What criteria are used in the Basic Program Funds allocation?
350.325 How is the performance factor determined?
350.327 How may States qualify for Incentive Funds?
350.329 How may a State or a local agency qualify for High Priority or Border Activity Funds?
350.331 How does a State ensure its laws and regulations are compatible with the FMCSRs and HMRs?
350.333 What are the guidelines for the compatibility review?
350.335 What are the consequences if my State has laws or regulations incompatible with the Federal regulations?
350.337 How may State laws and regulations governing motor carriers, CMV drivers, and CMVs in interstate commerce differ from the FMCSRs and still be considered compatible?
350.339 What are tolerance guidelines?
350.341 What specific variances from State laws and regulations governing motor carriers, CMV drivers and CMVs engaged exclusively in intrastate commerce are allowed?
350.343 How may a State obtain a new exemption for State laws and regulations for a specific industry involved exclusively in intrastate commerce and not be subject to Federal jurisdiction?
350.345 How does a State apply for additional variances from the tolerance guidelines?

Authority: 49 U.S.C. 31100–31104, 31108, 31136, 31140–31141, 31161, 31310–31311, 31502; and 49 CFR 1.48.

Subpart A—General

§ 350.101 What is the Motor Carrier Safety Assistance Program (MCSAP)?

The MCSAP is a Federal grant program that provides financial assistance to States to reduce the number and severity of crashes and hazardous materials incidents involving commercial motor vehicles (CMV). The goal of the MCSAP is to reduce CMV-involved crashes, fatalities, and injuries through consistent, uniform, and effective CMV safety programs. Investing grant monies in appropriate safety programs will increase the likelihood that safety defects, driver deficiencies, and unsafe motor carrier practices will be detected and corrected before they become contributing factors to a crash. The MCSAP also sets forth the conditions for participation by States and local jurisdictions and promotes the adoption and enforcement of safety rules, regulations, and standards compatible with the Federal Motor Carrier Safety Regulations (FMCSRs) and Federal Hazardous Material Regulations (HMRs).

§ 350.103 What is the purpose of this part?

The purpose of this part is to ensure the FHWA, States, and other political jurisdictions work in partnership to establish programs to improve motor carrier, CMV, and driver safety to support a safe and efficient transportation system.

§ 350.105 Definitions used in this part.

Administration—means the Federal Highway Administration (FHWA).

Administrative Takedown Funds—funds deducted by the FHWA each fiscal year from the amount made available for the MCSAP for expenses incurred in the administration of the MCSAP, including expenses to train State and local government employees and develop related training materials.

Administrator—means the Federal Highway Administrator.

Basic Program Funds—means the total MCSAP funds less the High Priority Activity, Border Activity, Administrative Takedown, and Incentive Funds.

Border Activity Funds—funds provided to States, local governments, and other persons carrying out programs, activities, and projects relating to CMV vehicle safety and regulatory enforcement supporting the North American Free Trade Agreement (NAFTA) at the U.S. border. Up to 5 percent of total MCSAP funds are available for these activities.

Commercial Motor Vehicle (CMV)—means a motor vehicle that has any of the following three characteristics:

(1) A gross vehicle weight (GVW), gross vehicle weight rating (GVWR), gross combination weight (GCW), or gross combination weight rating (GCWR) of 4,537 kilograms (10,001 pounds) or more.

(2) Regardless of weight, designed or used to transport 16 or more passengers, including driver.

(3) Regardless of weight, used in the transportation of hazardous materials and is required to be placarded under the HMRs (49 CFR Part 172, Subpart F).

Commercial Vehicle Safety Plan—The grant application document for States seeking to participate in the Motor Carrier Safety Assistance Program. The application must be approved by the Office of Motor Carriers for States to qualify for MCSAP funds. The plan consists of an assessment of the previous year's achievements, the State's projected activities for the coming year, based upon identified problems, and evaluation measures which allow the State to assess program outcomes. It must also contain an itemized budget and a budget summary, and the State's projected training plan for the new year. The CVSP must be accompanied by a Certification of Compliance, and a copy of any new or revised State law that bears on any item listed in the Certificate.

Compatible or Compatibility—means that State laws and regulations applicable to interstate commerce and to intrastate movement of hazardous materials are identical to the FMCSRs and HMRs. State laws applicable to intrastate commerce are either identical to the FMCSRs or fall within the established limited variances under § 350.341 of this part.

High Priority Activity Funds—funds provided to States, local governments, and other persons carrying out activities and projects that are of high priority and improve CMV safety and CMV safety regulation compliance. Up to 5 percent of total MCSAP funds are available for these activities.

Incentive Funds—funds awarded to States achieving reductions in CMV involved fatal crashes, CMV crash rate, or meeting specified CMV safety program performance criteria.

Motor Carrier—means a for-hire motor carrier or private motor carrier. The term includes a motor carrier's agents, officers, or representatives responsible for hiring, supervising, training, assigning, or dispatching a driver or concerned with the installation, inspection, and maintenance of motor vehicle equipment or accessories or both.

North American Standard Inspection—The methodology used by State CMV safety inspectors when they conduct safety inspections of CMVs. This consists of various levels of inspection of the vehicle or driver or both. The inspection criteria are developed by the Office of Motor Carriers with the Commercial Vehicle Safety Alliance, an association of States, Canadian Provinces, and Mexico whose members agree to adopt these standards for inspecting commercial motor vehicles in their jurisdiction.

Performance Factor—An adjustment to a State's annual Basic Program Funds

based upon its CMV crash rate for the last full year for which data is available.

§ 350.107 What jurisdictions are eligible for MCSAP funding?

All of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, American Samoa, Guam, and the Virgin Islands are eligible to receive MCSAP grants directly from the FHWA. For purposes of this subpart, all references to ''State'' or ''States'' include these jurisdictions.

§ 350.109 What are the national program elements?

The national program elements include the following five activities:

(a) driver/vehicle inspections;

(b) traffic enforcement;

(c) compliance reviews;

(d) public education and awareness; and

(e) data collection.

§ 350.111 What constitutes ''traffic enforcement'' for the purpose of the MCSAP?

Traffic enforcement means those activities carried out by duly authorized State or local enforcement officials which include stopping CMVs operating on highways, streets, or roads after having been detected as being in violation of State or local motor vehicle or traffic laws (e.g., speeding, following too closely, reckless driving, improper lane change). To be eligible for funding through the grant, the enforcement official must conduct an inspection of the CMV or driver or both prior to releasing the driver or CMV or both for resumption of operations.

Subpart B—Requirements for Participation

§ 350.201 What conditions must a State meet to qualify for Basic Program Funds?

Your State must meet the following twenty-two conditions:

(a) Assume responsibility for improving motor carrier safety and adopting and enforcing State safety laws and regulations that are compatible with the FMCSRs and HMRs.

(b) Implement a performance-based program by the beginning of Fiscal Year 2000 and submit a CVSP which will serve as the basis for monitoring and evaluating your State's performance.

(c) Designate in its certification the lead State agency responsible for implementing the CVSP.

(d) Ensure that only agencies having the legal authority, resources, and qualified personnel necessary to enforce the FMCSRs and HMRs or compatible State laws or regulations are assigned to perform functions in accordance with the approved CVSP.

(e) Allocate adequate funds for the administration of the CVSP which includes the enforcement of the FMCSRs, HMRs, or compatible State laws or regulations.

(f) Maintain the aggregate expenditure of funds by the State and its political subdivisions, exclusive of Federal funds, for CMV safety programs and related programs eligible for funding under this part at a level at least equal to the average expenditure for its last three full Federal or State fiscal years before December 18, 1991.

(g) Provide legal authority for a right of entry and inspection adequate to carry out the CVSP.

(h) Prepare and submit, upon request, all reports as required in connection with the CVSP or other conditions of the grant to the FHWA.

(i) Adopt uniform reporting requirements and use uniform forms to record work activities performed under the CVSP as may be established and required by the FHWA.

(j) Require registrants of CMVs to declare, at the time of registration, their knowledge of applicable FMCSRs, HMRs, or compatible State laws or regulations.

(k) Grant maximum reciprocity for inspections conducted under the North American Standard Inspection through the use of a nationally accepted system that allows ready identification of previously inspected CMVs.

(l) Conduct CMV size and weight enforcement activities funded under this program only to the extent those activities do not diminish the effectiveness of other CMV safety enforcement programs.

(m) Coordinate the CVSP, data collection and information systems with State highway safety programs under title 23, U.S.C.

(n) Ensure participation in SAFETYNET and other information systems by all appropriate jurisdictions receiving funding under this section.

(o) Ensure information is exchanged with other States in a timely manner.

(p) Emphasize and improve enforcement of State and local traffic laws and regulations related to CMV safety.

(q) Promote activities in support of national priorities and performance goals, including the following three activities:

(1) Activities aimed at removing impaired CMV drivers from the highways through adequate enforcement of restrictions on the use of alcohol and controlled substances and by ensuring ready roadside access to alcohol detection and measuring equipment.

(2) Activities aimed at providing an appropriate level of training to MCSAP personnel to recognize drivers impaired by alcohol or controlled substances.

(3) Interdiction activities affecting the transportation of controlled substances by CMV drivers and training on appropriate strategies for carrying out those interdiction activities.

(r) Enforce requirements relating to the licensing of CMV drivers, including checking the status of commercial driver's licenses.

(s) Require the proper and timely correction of CMV safety violations noted during inspections carried out with MCSAP funds.

(t) Enforce registration and financial responsibility requirements of 49 U.S.C. 31138 and 31139.

(u) Adopt and maintain consistent, effective, and reasonable sanctions for violations of CMV, driver, and hazardous materials regulations.

(v) Conduct roadside inspections at locations that are adequate to protect the safety of drivers and enforcement personnel.

§ 350.203 What happens to a participating State's Basic Program and Incentive Funds if it adopts an incompatible law or regulation?

A State that currently has compatible laws and regulations pertaining to interstate and intrastate CMV safety but adopts a law or regulation which results in an incompatible rule (i.e., neither identical to the FMCSRs or within the tolerance guidelines), would not be eligible for Basic Program Funds or Incentive Funds.

§ 350.205 How and when does a State apply for MCSAP funding?

(a) The lead agency, designated by the Governor, must submit your State's CVSP to the State Director, Office of Motor Carriers (OMC), FHWA, on or before August 1 of each year.

(b) This deadline may, for good cause, be extended by the OMC State Director for a period not to exceed 30 calendar days.

(c) For a State to receive funding, the CVSP must be complete and include all required documents.

§ 350.207 What response does a State receive to its CVSP submission?

(a) The FHWA will notify your State, in writing, within 30 days of receipt of the CVSP whether:

(1) The plan is approved.

(2) Approval of the plan is withheld because the CVSP does not meet the requirements of this part, or is not adequate to ensure effective enforcement of the FMCSRs and HMRs

or compatible State laws and regulations.

(b) If approval is withheld, your State will then have 30 days from the date of the notice to modify and resubmit the plan.

(c) Disapproval of a resubmitted plan is final.

§ 350.209 How does a State demonstrate that it satisfies the conditions for Basic Program funding?

(a) The Governor, the State's Attorney General, or other State official specifically designated by the Governor, must submit a certification that the State is in compliance the requirements of § 350.201 of this part.

(b) Your State must submit the certification along with its CVSP, and supplement it with a copy of any State law, regulation, or form pertaining to CMV safety adopted since the State's last certification, if any, that bears on the items contained in § 350.201 of this part.

§ 350.211 What is the format of the certification required by § 350.209?

Your State's certification must be consistent with the following content: I (name), (title), on behalf of the State (Commonwealth) of (State), as requested by the Federal Highway Administrator as a condition of approval of a grant under the authority of 49 U.S.C. 31102 as amended, do hereby certify as follows:

1. The State has adopted commercial motor carrier and highway hazardous materials safety rules and regulations that are compatible with the FMCSRs and the HMRs.

2. The State has designated (name of State CMV safety agency) as the lead agency to administer the CVSP for the grant sought and (names of agencies) to perform defined functions under the plan. These agencies have the legal authority, resources, and qualified personnel necessary to enforce the State's commercial motor carrier, driver, and highway hazardous materials safety laws or regulations.

3. The State will obligate the funds or resources necessary to provide a matching share to the Federal assistance provided in the grant to administer the plan submitted and to enforce the State's commercial motor carrier safety, driver, and hazardous materials laws or regulations in a manner consistent with the approved plan.

4. The laws of the State provide the State's enforcement officials right of entry and inspection sufficient to carry out the purposes of the CVSP, as approved, and provide that the State will grant maximum reciprocity for inspections conducted pursuant to the North American Inspection Standard, through the use of a nationally accepted system allowing ready identification of previously inspected CMVs.

5. The State requires that all reports relating to the program be submitted to the appropriate State agency or agencies, and the State will make these reports available, in a timely manner, to the FHWA on request.

6. The State has uniform reporting requirements and uses FHWA designated forms for record keeping, inspection, and other enforcement activities.

7. The State has in effect a requirement that registrants of CMVs declare their knowledge of the applicable Federal or State CMV safety laws or regulations.

8. The State will maintain the level of its expenditures, exclusive of Federal assistance, at least at the level of the average of the aggregate expenditures of the State and its political subdivisions during the past three full State or Federal fiscal years immediately before December 18, 1991. These expenditures must cover at least the following four program areas, if applicable:

a. Motor carrier safety programs in accordance with § 350.301,

b. Size and weight enforcement programs,

c. Traffic safety, and

d. Drug interdiction enforcement programs

9. The State will ensure that violation fines imposed and collected by the State are consistent, effective, and equitable.

10. The State will ensure timely and proper correction of violations discovered during inspections conducted using MCSAP funds.

11. The State will ensure that the CVSP is coordinated with the State highway safety plan under 23 U.S.C. 402. The name of the Governor's highway safety representative (or other authorized State official through whom coordination was accomplished) is (Name) .

12. The State has participated in SAFETYNET since (Date) .

13. The State has undertaken efforts to emphasize and improve enforcement of State and local traffic laws as they pertain to CMV safety.

14. The State will ensure that roadside inspections will be conducted at a location that is adequate to protect the safety of drivers and enforcement personnel.

Date

_____

Signature

_____

§ 350.213 What must a State CVSP include?

Your State's CVSP must reflect a performance-based program, and contain the following thirteen items:

(a) A statement of the State agency goal or mission.

(b) A comprehensive evaluation of the effectiveness of the prior years' activities in reducing CMV accidents, injuries and fatalities, and improving driver and motor carrier safety performance. Evaluation data should measure program progress in one-year increments. This may be calendar year or fiscal year or any other 12-month period of time chosen by the State. The evaluation should show trends supported by safety and program performance data collected over several years. It should identify safety or performance problems in the State and those problems should be addressed in the new or modified CVSP.

(c) A brief narrative describing how the State program addresses the national program elements listed in § 350.109. The plan should address these elements even if there are no planned activities in one of the program areas. The rationale for the resource allocation decision should be explained.

(d) A definitive problem statement for each objective which is supported by data or other information. The CVSP must identify the source of the data, and who is responsible for its collection, maintenance, and analysis.

(e) Performance objectives, stated in quantifiable terms, to be achieved through the State plan. Objectives should include a measurable reduction in highway accidents or hazardous materials incidents involving CMVs. The objective may also include documented improvements in other program areas (e.g., legislative or regulatory authority, enforcement results, or resource allocations).

(f) Strategies to be employed to achieve performance objectives. Strategies may include driver/vehicle roadside inspections, compliance reviews, training, public or industry outreach, drug or alcohol enforcement, CDL activities, or use of technology used to address identified problems and stated objectives to improve CMV safety.

(g) Specific activities intended to achieve the stated strategies and objectives. This item should also describe what resources will be used in carrying out each activity and should be related to preparation of the CVSP budget for the State. Planned activities must be eligible under this program as defined in § 350.309.

(h) Specify quantifiable performance measures, as appropriate. These

performance measures will be used to assist the State in monitoring the progress of its program and preparing an annual evaluation.

(i) A description of the State's method for ongoing monitoring of the progress of its plan. This should include who will conduct the monitoring, the frequency with which it will be carried out, and how and to whom reports will be made.

(j) A budget supported by the CVSP describing the expenditures for allocable costs such as personnel and related costs, equipment purchases, printing, information systems costs, and other eligible costs consistent with § 350.311.

(k) A budget summary including planned expenditures for that fiscal year in each national program area.

(l) The results of the annual review to determine the compatibility of State laws and regulations with the FMCSRs and HMRs.

(m) A copy of any new law or regulation affecting CMV safety enforcement that was enacted by the State since the last CVSP was submitted.

§ 350.215 What are the consequences of a State failing to perform according to an approved CVSP or otherwise failing to meet the conditions of this part?

(a) If your State is not performing according to an approved plan or not adequately meeting conditions under § 350.201, the Administrator may issue a written notice of proposed determination of nonconformity to the Governor of the State or the official designated in the plan. The notice will set forth the reasons for the proposed determination.

(b) Your State will then have 30 days from the date of the notice to reply. Your reply must address the deficiencies or incompatible situation cited in the notice and provide documentation as necessary.

(c) Based upon your State's reply, the Administrator will make a final decision.

(d) In the event your State fails to reply to a notice of proposed determination of nonconformity in accordance with the provisions of paragraph (b) of this section, the proposed determination becomes the Administrator's final decision.

(e) Any adverse decision will result in immediate cessation of Federal funding under this part.

(f) Any State aggrieved by an adverse decision under this section may seek judicial review under 5 U.S.C. chapter 7.

Subpart C—Funding

§ 350.301 What level of effort must a State maintain to qualify for MCSAP funding?

(a) Your State must maintain the average aggregate expenditure (monies spent during the base period of the three full Federal or State fiscal years before December 18, 1991) of State funds for motor carrier and highway hazardous materials safety enforcement purposes, in the year in which the grant is sought.

(b) Your State may use either the Federal or State Fiscal years.

(c) In determining the State's maintenance of effort, you should not include:

(1) Federal funds received for support of motor carrier and hazardous materials safety enforcement,

(2) State matching funds, or

(3) State funds used for federally sponsored demonstration or pilot CMV safety programs.

(d) You must include costs associated with activities performed during the base period by State or local agencies currently receiving or projected to receive funds under this Part. You must include only those activities which meet the current requirements for funding eligibility under the grant program.

§ 350.303 What are the State and Federal shares of expenses incurred under an approved CVSP?

(a) The FHWA will reimburse up to 80 percent of the eligible costs incurred in the administration of an approved CVSP.

(b) In-kind contributions are acceptable in meeting your State's matching share if they represent eligible costs as established by 49 CFR Part 18 or agency policy.

§ 350.305 Are U.S. Territories subject to the matching funds requirement?

The Administrator waives the requirement for matching funds for the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Marianas.

§ 350.307 How long are MCSAP funds available to a State?

The funds obligated to a State will remain available for the rest of the fiscal year in which they were obligated and the next full fiscal year. The State must account for any prior year's unexpended funds in the annual CVSP. Funds must be expended in the order in which they are obligated.

§ 350.309 What activities are eligible for reimbursement under the MCSAP?

The primary activities eligible for reimbursement are:

(a) The five national program elements contained in § 350.109 of this part.

(b) Sanitary food transportation inspections performed under 49 U.S.C. 5708.

(c) The following three activities, when accompanied by an appropriate inspection and inspection report:

(1) Enforcement of size and weight regulations conducted at locations other than fixed scales (i.e., specific geographic locations where the weight of the vehicle can significantly affect the safe operation of the vehicle, or seaports where intermodal shipping containers enter and exit the United States).

(2) Detection of the unlawful presence of controlled substances in a CMV or on the driver or any occupant of a CMV.

(3) Enforcement of State traffic laws and regulations designed to promote the safe operation of CMVs.

§ 350.311 What specific items are eligible for reimbursement under the MCSAP?

All reimbursable items must be necessary, reasonable, allocable to the approved CVSP, and allowable under this part and 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. The eligibility of specific items is subject to review by the FHWA. The following six types of expenses are eligible for reimbursement:

(a) Personnel expense, including recruitment and screening, training, salaries and fringe benefits, and supervision.

(b) Equipment and travel expenses, including per diem, directly related to the enforcement of safety regulations, including vehicles, uniforms, communications equipment, special inspection equipment, vehicle maintenance, fuel, and oil.

(c) Indirect expenses for facilities, except fixed scales, used to conduct inspections or house enforcement personnel, support staff, and equipment to the extent they are measurable and recurring (e.g., rent and overhead).

(d) Expenses related to data acquisition, storage, and analysis specifically identifiable as program related to develop a data base to coordinate resources and improve efficiency.

(e) Clerical and administrative expenses, to the extent necessary and directly attributable to the MCSAP.

(f) Expenses related to the improvement of real property (e.g., installation of lights for the inspection of vehicles at night, minor modifications to existing structures). Acquisition of real property, land, or buildings are not eligible costs.

§ 350.313 How are MCSAP funds allocated?

(a) After deducting administrative expenses authorized in 49 U.S.C. 31104(e), the MCSAP funds are allocated as follows:

(1) Up to 5 percent of the MCSAP funds for each Fiscal Year may be distributed for High Priority Activities and Projects at the discretion of the Administrator.

(2) Up to 5 percent of the MCSAP funds for each Fiscal Year may be distributed for Border CMV Safety and Enforcement Programs at the discretion of the Administrator.

(3) The remaining funds will be allocated among qualifying States in two ways:

(i) As Basic Program Funds in accordance with § 350.313 of this part,

(ii) as Incentive Funds in accordance with § 350.313 of this part.

(4) The Basic Program Funds allocation may be subject to a performance factor, as provided in § 350.325 of this part.

(b) The funding provided in paragraphs (a)(1) and (a)(2) of this section may be awarded through contract, cooperative agreement, or grant. Local jurisdictions may qualify to participate in these programs. The FHWA will annually notify States if it intends to solicit State grant proposals for any portion of this funding.

(c) The funding provided under paragraphs (a)(1) and (a)(2) of this section may be made available to State agencies, local governments, and other persons that use and train qualified officers and employees in coordination with State Motor Vehicle Safety agencies.

(d) Table 1 of this section describes the distribution of MCSAP funds, as follows:

TABLE 1 OF § 360.313(D).—MCSAP FUNDS DISTRIBUTION

Fiscal year	2000	Percent	2001	Percent	2002	Percent	2003	Percent
Total MCSAP funds	$95,000,000		$100,000,000		$105,000,000		$110,000,000	
Administrative take-down	1,187,500		1,250,000		1,312,500		1,375,000	
High priority activities	4,750,000		5,000,000		5,250,000		5,500,000	
Border activities	4,750,000		5,000,000		5,250,000		5,500,000	
Basic program funds	75,881,250	90	75,437,500	85	74,550,000	80	73,218,750	75
Incentive funds	8,431,250	10	13,312,500	15	18,637,500	20	24,406,250	25

§ 350.315 How may Basic Program Funds be used?

Basic Program Funds may be used for any eligible activity consistent with § 350.309 of this part.

§ 350.317 What are Incentive Funds and how may they be used?

Incentive Funds are monies, in addition to Basic Program Funds, provided to the States that achieve reduction in CMV-involved fatal crashes, CMV crash rate, or that meet specified CMV safety performance criteria. Incentive Funds may be used for any eligible activity consistent with § 350.309 of this part.

§ 350.319 What are permissible uses of High Priority Activity Funds?

(a) The FHWA may generally use these funds to support, enrich, or evaluate State CMV safety programs and to accomplish the five objectives listed below:

(1) Implement, promote, and maintain national programs to improve CMV safety.

(2) Increase compliance with CMV safety regulations.

(3) Increase public awareness about CMV safety.

(4) Provide education on CMV safety and related issues.

(5) Demonstrate new safety related technologies.

(b) These funds will be allocated, at the discretion of the FHWA, to States, local governments, and other organizations that use and train qualified officers and employees in coordination with State safety agencies.

(c) The FHWA will notify the States when such funds are available.

(d) The Administrator may designate up to 5 percent of the annual MCSAP funding for these projects and activities.

§ 350.321 What are permissible uses of Border Activity Funds?

The FHWA may generally use such funds to develop and implement a national program addressing CMV safety and enforcement activities along the United States' borders.

These funds will be allocated, at the discretion of the FHWA, to States, local governments, and other organizations that use and train qualified officials and employees in coordination with State safety agencies. The FHWA will notify the States when such funds are available. The Administrator may designate up to 5 percent of the annual MCSAP funding for these projects and activities.

§ 350.323 What criteria are used in the Basic Program Funds allocation?

(a) The funds are distributed proportionally to the States using the following four, equally weighted (25 percent), factors.

(1) Road miles (all highways).

(2) All vehicle miles traveled (AVMT).

(3) Population—annual census estimates as issued by the U.S. Census Bureau.

(4) Special fuel consumption (net after reciprocity adjustment) as collected by the FHWA.

(b) Distribution of Basic Program Funds is subject to a maximum and minimum allocation as illustrated in Table 2 to this section, as follows:

TABLE 2 OF § 350.323(B).—BASIC PROGRAM FUND ALLOCATION LIMITATIONS

Recipient	Maximum allocation	Minimum allocation
States and Puerto Rico	4.944% of the Basic Program Funds	$350,000 or 0.44% of Basic Program Funds, whichever is greater.
U.S. Territories	$250,000 (fixed amount)	

§ 350.325 How is the performance factor determined?

(a) The performance factor is determined by calculating the ratio of fatal crashes in your State involving large trucks as compiled by the Fatal Analysis Reporting System (FARS) administered by the National Highway Traffic Safety Administration (NHTSA), and population estimates in your State as reported annually by the U.S. Census Bureau. This ratio is known as the ''crash rate.'' The performance factor adjustment is calculated using the crash rate as follows:

(1) For each State, an average crash rate is computed for the 10-calendar-year period prior to the previous full calendar year or the most recent year that data are available.

(2) If the crash rate for the most recent calendar year for which data is available exceeds the 10-year average crash rate, the State's allocation will be reduced by the amount the crash rate increased. The maximum reduction cannot exceed 1 percent.

(3) If the crash rate continues to be above the 10-year average crash rate, in subsequent consecutive years, the maximum forfeiture will increase by up to 1 percent each year.

(4) If the State's most current crash rate is not above the 10-year average crash rate, there will be no reduction.

(b) The funds withheld from States because of the performance adjustment will be redistributed equally among those States showing a crash rate improvement.

§ 350.327 How may States qualify for Incentive Funds?

(a) Your State may qualify for Incentive Funds if it can demonstrate that its CMV safety program has shown improvement in any or all of the following five categories:

(1) Reduction of CMV-involved fatal crashes.

(2) Reduction of CMV-involved crash rate.

(3) Upload CMV crash data within FHWA policy guidelines.

(4) Verification, during the roadside inspection process, of the status and validity of all CDLs through CDLIS, NLETS, or the State licensing authority.

(5) Upload of CMV inspection data within FHWA policy guidelines.

(b) Incentive Funds will be distributed based upon the following five safety and program performance factors:

(1) The number of CMV-involved fatal crashes for the most recent calendar year for which data are available is compared to the 10-year average number of CMV fatal crashes ending with the preceding year. The number of CMV-involved fatal crashes, as reported to FARS, will be computed for the 10-year average. Five shares will be awarded for any reduction.

(2) The crash rate for the most recent calendar year for which data are available is compared to the average 10-year crash rate. Four shares will be awarded for any reduction.

(3) Three shares will be awarded States that upload CMV crash reports within FHWA policy guidelines.

(4) Two shares will be awarded States that certify that all CDLs are verified, as part of the inspection process, through CDLIS, NLETS, or the State licensing authority.

(5) One share will be awarded States that upload CMV inspection reports within FHWA policy guidelines.

(c) The total of all States' shares will be divided into the dollar amount of Incentive Funds available, thereby establishing the value of one share. Each State's incentive allocation will then be determined by the number of shares it has that year, multiplied by the dollar value of one share.

(d) States may use Incentive Funds for any eligible CMV safety purpose.

(e) Incentive Funds are subject to the same State matching requirements as Basic Program Funds.

(f) A State must annually certify compliance with the applicable incentive criteria to receive Incentive Funds.

(g) A State may submit the required certification as part of its CVSP or separately.

§ 350.329 How may a State or a local agency qualify for High Priority or Border Activity Funds?

(a) States must meet the requirements of § 350.201 of this part;

(b) Local agencies must meet the following nine conditions:

(1) Prepare a proposal in accordance with § 350.201 of this part.

(2) Coordinate the proposal with the State lead MCSAP agency to ensure the proposal is consistent with State and national CMV safety program priorities.

(3) Certify your local jurisdiction has the legal authority, resources, and trained and qualified personnel necessary to accomplish the following three activities:

(i) Enforce the FMCSR's or HMR's.

(ii) Enforce compatible State regulations.

(iii) Implement a special grant activity.

(4) Designate a person who will be responsible for implementation, reporting, and administering the approved proposal and will be the primary contact for the project.

(5) Agree to fund up to 20 percent of the proposed request.

(6) Agree to prepare and submit all reports required in connection with the proposal or other conditions of the grant.

(7) Agree to use the forms and reporting criteria required by the State lead MCSAP agency and/or the FHWA to record work activities to be performed under proposal.

(8) Certify effective and equitable sanctions for violations of CMV and driver laws and regulations that are consistent with those of the State.

(9) Certify participation in national data bases appropriate to the project.

§ 350.331 How does a State ensure its laws and regulations are compatible with the FMCSRs and HMRs?

(a) Your State must review any new law or regulation enacted, or any proposed law or regulation affecting CMV safety as soon as possible, but in any event immediately after enactment or issuance, for compatibility with the FMCSRs and HMRs.

(b) If your review determines that the new law or regulation is incompatible with the FMCSRs and/or HMRs, you must immediately notify the OMC State Director.

(c) Your State must conduct an annual review of its laws and regulations for compatibility and report the results of that review as a part of the annual CVSP in accordance with § 350.209(b) of this part with a certification of compliance, no later than August 1 of each year. The report must include the following two items:

(1) A copy of your State law, regulation, or policy relating to CMV safety that was adopted since your State's last report.

(2) A certification, executed by your State's Governor, Attorney General, or other State official specifically designated by the Governor, stating that the annual review was performed and that State CMV safety laws remain compatible with the FMCSRs and HMRs. If State CMV laws are no longer compatible, the certifying official shall explain why not.

(d) As soon as practical after the effective date of any amendment to the FMCSRs or HMRs, but no later than three years after that date, your State must amend its laws or regulations to make them compatible with the FMCSRs and/or HMRs, as amended.

§ 350.333 What are the guidelines for the compatibility review?

(a) The law or regulation must apply to all segments of the motor carrier industry (i.e., for-hire and private motor carriers of property and passengers).

(b) Laws and regulations reviewed for the CDL compliance report are excluded from the compatibility review.

(c) Definitions of words or terms must be consistent with those in the FMCSRs and HMRs.

(d) Your State must identify any law or regulation that is not the same as the corresponding Federal regulation and evaluate it in accordance with Table 3 to this section, as follows:

TABLE 3 TO § 350.333.—GUIDELINES FOR THE STATE LAW AND REGULATION COMPATIBILITY REVIEW

Law or regulation has same effect as corresponding Federal regulation	Applies to interstate or intrastate commerce	Less stringent or more stringent	Action authorized
Yes			Compatible—Interstate and intrastate commerce enforcement authorized.
No	Intrastate		Refer to § 350.341.
No	Interstate	Less stringent	Enforcement prohibited.
No	Interstate	More stringent	Enforcement authorized if the State can demonstrate the law or regulation has a safety benefit or does not create an undue burden upon interstate commerce.

§ 350.335 What are the consequences if my State has laws or regulations incompatible with the Federal regulations?

(a) Upon a finding by the FHWA, based upon its own initiative or upon a petition of any person, including any State, that your State law, regulation or enforcement practice pertaining to CMV safety, in either interstate or intrastate commerce, is incompatible with the FMCSRs or HMRs, the FHWA may initiate a proceeding under § 350.215 of this part for withdrawal of your State's funding.

(b) Any decision regarding the compatibility of your State law or regulation with the HMRs that requires an interpretation will be referred to the Research and Special Programs Administration of the DOT for such interpretation before proceeding under § 350.215 of this part.

§ 350.337 How may State laws and regulations governing motor carriers, CMV drivers, and CMVs in interstate commerce differ from the FMCSRs and still be considered compatible?

All State laws and regulations governing motor carriers, CMV drivers, and CMVs may only vary from the Federal requirements applying to the transportation of migrant workers under Part 398 of this subchapter and still be considered compatible for purposes of MCSAP funding.

§ 350.339 What are tolerance guidelines?

Tolerance guidelines set forth the limited deviations from the FMCSRs allowed in your State's laws and regulations. These variances apply only to motor carriers, CMV drivers and CMVs engaged exclusively in intrastate commerce and not subject to Federal jurisdiction.

§ 350.341 What specific variances from State laws and regulations governing motor carriers, CMV drivers, and CMVs engaged exclusively in intrastate commerce are allowed?

(a) A State may exempt from all or part of their regulations CMVs with a GVW, GVWR, or GCWR less than 11,801 kg (26,001 lbs.) and engaged exclusively in intrastate commerce unless the vehicle meets either of the following two conditions:

(1) Transports hazardous materials requiring a placard.

(2) Is designed or used to transport 16 or more people including the driver.

(b) State laws and regulations may not grant exceptions or exemptions based upon the type of transportation being performed.

(c) A State may retain those exceptions and exemptions from their motor carrier safety laws and regulations that were in effect before April 1988, are still in effect, and apply to specific industries operating exclusively in intrastate commerce.

(d) State laws and regulations must not include exemptions based upon the distance a motor carrier or driver operates from the work reporting location. This prohibition does not apply to those exemptions already contained in the FMCSRs nor to the extension of the mileage radius exemption, contained in 49 CFR 395.1(e), from 100 to 150 miles.

(e) Hours of service—State hours-of-service limitations applied to intrastate transportation may vary to the following extent:

(1) A 12-hour driving limit, provided driving a CMV after having been on duty more than 16 hours is prohibited.

(2) Driving prohibitions for drivers who have been on duty 70 hours in 7 consecutive days or 80 hours in 8 consecutive days.

(f) Age of CMV driver—All CMV drivers must be at least 18 years old.

(g) Grandfather clauses—States may provide grandfather clauses in their rules and regulations if such exemptions are uniform or in substantial harmony with the FMCSRs.

(h) Driver qualifications:

(1) Drivers who do not meet the physical qualification standards in § 391.41 of this subchapter may continue to be qualified to operate a CMV in intrastate commerce if the following three conditions are met:

(i) The driver was qualified under existing State law or regulation at the time the State adopted physical qualification standards compatible with the Federal standards in 49 CFR 391.41.

(ii) The otherwise non-qualifying medical or physical condition has not substantially worsened.

(iii) No other non-qualifying medical or physical condition has developed.

(2) The State may adopt or continue programs granting waivers to drivers with medical or physical conditions that would otherwise be non-qualifying under the State's equivalent of 49 CFR 391.41 if the waivers are based upon sound medical judgment combined with appropriate performance standards ensuring no adverse impact on safety.

§ 350.343 How may a State obtain a new exemption for State laws and regulations for a specific industry involved exclusively in intrastate commerce and not be subject to Federal jurisdiction?

The FHWA strongly discourages exemptions and exceptions for specific industries, but will consider such requests if the State submits documentation containing information supporting evaluation of the following 10 factors:

(a) Type and scope of the industry exception requested, including percentage of industry affected, number

of vehicles, mileage traveled, number of companies involved.

(b) Type and scope of the requirement to which the exception or exemption would apply.

(c) Safety performance of that specific industry (e.g., accident frequency, rates and comparative figures).

(d) Inspection information (e.g., number of violations per inspection, driver and vehicle out-of-service information).

(e) Other CMV safety regulations enforced by other State agencies not participating in the MCSAP.

(f) Commodity transported (e.g., livestock, grain).

(g) Similar variations granted and the circumstances under which they were granted.

(h) Justification for the exception or exemption.

(i) Identifiable effects on safety.

(j) State's economic environment and its ability to compete in foreign and domestic markets.

§ 350.345 How does a State apply for additional variances from the tolerance guidelines?

Any State may apply to the FHWA Administrator for a variance from the tolerance guidelines. The variance will be granted only if the State satisfactorily demonstrates that the State law, regulation or enforcement practice:

(a) Achieves substantially the same purpose as the similar Federal regulation,

(b) Does not apply to interstate commerce, and

(c) Is not likely to have an adverse impact on safety.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 061998C]

Fisheries of the Northeastern United States; Decision on Petition for Rulemaking for Sea Scallop Management

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

ACTION: Decision on petition for rulemaking.

SUMMARY: NMFS announces its decision not to undertake the rulemaking requested in a petition submitted by David Frulla (Petitioner) of Brand, Lowell & Ryan on behalf of the Fisheries Survival Fund. Petitioner petitioned the Secretary of Commerce (Secretary) to determine where scallops are large in size and number and where primary groundfish are more susceptible to scallop gear in the Georges Bank Closed Area the Petitioner believes that this combination of information would optimize scallop fishing while still maximizing recovery of primary groundfish stocks. After the data have been collected, the Petitioner requested that the Secretary take emergency action to open portions of Georges Bank currently closed to scallop fishing. To balance these openings, the Petitioner proposed to close some currently open areas. The decision to deny the petition at this time is based on public comments received on this petition for rulemaking and the progress being made on this management issue by the New England Fishery Management Council (Council).

FOR FURTHER INFORMATION CONTACT: Gary C. Matlock, Ph.D., Director, Office of Sustainable Fisheries, (301) 713–2344, or Mark R. Millikin, (301) 713–2344.

SUPPLEMENTARY INFORMATION: On June 30, 1998 (63 FR 35560), NMFS issued a notice of receipt of petition for rulemaking submitted by the Petitioner on behalf of the Fisheries Survival Fund. The petition included a request that an experimental fishery be conducted to determine where sea scallops that are large in number and size might exist in the Georges Bank Closed Area. Also, when the data have been collected, the petitioner requested that the Secretary take emergency action to open portions of Georges Bank currently closed to scallop fishing. These openings could be balanced by closing some currently open areas. The comment period for this notice of receipt of petition ended on August 31, 1998. NMFS announced that it was reopening the public comment period for this petition for rulemaking in the **Federal Register** from September 9, 1998, through October 9, 1998 (63 FR 48167; September 9. 1998). This reopening of the public comment period was in response to requests during the initial 60-day comment period.

Public Comments Received

Nine commenters support taking emergency action to reopen portions of the Closed Area on Georges Bank to scallop harvest on a rotational basis because it would have immediate economic benefits to the sea scallop industry. Six commenters opposed taking Secretarial emergency action as described in the petition for rulemaking based on concerns related to one or more of the following: Groundfish bycatch, gear conflict, and habitat issues. Some of the commenters opposing the petition for rulemaking felt that the Council's open forum process is the best vehicle to ensure that all relevant issues are adequately addressed and an opportunity for public comment is provided.

Before this petition for rulemaking was received, NMFS began working with researchers from the Center for Marine Science and Technology of the University of Massachusetts Dartmouth and the Virginia Institute of Marine Science on a collaborative experimental fishery in Closed Area II of Georges Bank to evaluate, on a limited basis, areas of abundance of sea scallops (in number and size), rates of bycatch of groundfish, and habitat considerations. The experimental fishery was conducted from August 28, 1998, through October 5, 1998, and the results are currently being evaluated.

Amendment 7 to the Fishery Management Plan for Atlantic Sea Scallops was approved by NMFS on February 18, 1999, and contains a measure that allows the Council to implement framework action to establish and modify closed areas. Therefore, this measure can be used to implement rotational area openings and closures. The Council held the first of two Council meetings on February 24–25, 1999, scheduled to consider short-term framework options for scallop vessels to gain access to scallops in some groundfish closed areas as soon as possible. These framework actions are Frameworks 11 and 29 to the Atlantic Sea Scallop and Northeast Multispecies Fishery Management Plans (FMP), respectively. If approved, the actions could be effective this summer. These framework actions would be followed by a more comprehensive FMP amendments to fully address a rotational harvest strategy of opening and closing areas of to scallop fishing.

NMFS believes that the public should be given an opportunity to participate in rulemaking to address the complex issues surrounding reopening portions of closed areas, including: economic needs in the sea scallop fishery, safeguarding against further overfishing of sea scallops, bycatch of juvenile groundfish, critical habitat concerns for sea scallops and groundfish, and possible conflicts between mobile and fixed gear. Therefore, the Petitioner's request for emergency action to reopen portions of Georges Bank Closed Areas to sea scallop harvest is denied at this

time in favor of the deliberative process and opportunity for public comment provided by framework rulemaking that can be undertaken by the Council.

Dated: March 3, 1999.

Gary C. Matlock,

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

[FR Doc. 99–5798 Filed 3–8–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 45
Tuesday, March 9, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 99–009–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the Voluntary Scrapie Flock Certification Program.

DATES: We invite you to comment. We will consider all comments that we receive by May 10, 1999.

ADDRESSES: Send comments regarding the accuracy of burden estimate, ways to minimize the burden (such as through the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information to: Docket No. 99–009–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please send an original and three copies, and state that your comments refer to Docket No. 99–009–1. 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: For information regarding the Voluntary Scrapie Flock Certification Program, contact Dr. Diane Sutton, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1237, (301) 734–6954; or e-mail: diane.l.sutton@usda.gov. For copies of more detailed information on the information collection, contact Ms. Cheryl Groves, Agency Support Services Specialist, at (301) 734–5086.

SUPPLEMENTARY INFORMATION:

Title: Scrapie Flock Certification and Identification Procedures.

OMB Number: 0579–0101.

Expiration Date of Approval: September 30, 1999.

Type of Request: Extension of approval of an information collection.

Abstract: The United States Department of Agriculture is responsible for preventing the spread of contagious, infectious, or communicable animal diseases from one State to another, and for eradicating such diseases from the United States when feasible.

In connection with our mission of controlling and eradicating scrapie in the United States, the Animal and Plant Health Inspection Service has promulgated regulations establishing the Voluntary Scrapie Flock Certification Program. It consists primarily of identifying and certifying flocks that are free of scrapie in order to prevent the disease from spreading.

Generally, the presence of the disease cannot be detected until the animal becomes clinically ill. Due to the lack of a validated live animal diagnostic test for scrapie, efforts to control and eliminate the disease depend upon the cooperation of flock owners and veterinarians in reporting clinically ill animals.

This process requires that participating flock owners communicate vital information to us (via mail or telephone) concerning the health of their animals.

Collecting this information necessitates the use of a number of information-gathering documents that are critical to our ability to locate flocks infected with scrapie and to prevent the interstate spread of scrapie. The collection of this information is therefore crucial to the success of our Voluntary Scrapie Flock Certification Program.

We are asking the Office of Management and Budget (OMB) to approve the continued use of these information collection activities.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection activity. We need this outside input to help us:

(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 our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, or other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 2.5049 hours per response.

Respondents: Flock owners, State animal health officials, accredited veterinarians, State and Federal veterinary medical officers, and State and Federal diagnostic laboratory personnel.

Estimated annual number of respondents: 1,180.

Estimated annual number of responses per respondent: 5.3610.

Estimated annual number of responses: 6,326.

Estimated total annual burden on respondents: 15,846 hours. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 3rd day of March 1999.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–5781 Filed 3–8–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 99–013–1]

Availability of Environmental Assessments and Findings of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that two environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of the genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Assistant Director, Scientific Services, PPQ, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–7710. For copies of the environmental assessments and findings of no significant impact, contact Ms. Linda Lightle at (301) 734–8231; e-mail: Linda.Lightle@usda.gov. Please refer to the permit numbers listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained or a notification acknowledged before a regulated article may be introduced into the United States. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, and release into the environment of a regulated article.

In the course of reviewing each permit application, the Animal and Plant Health Inspection Service (APHIS) assessed the impact on the environment that releasing the organisms under the conditions described in the permit applications would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date issued	Organisms	Field test location
98–274–02r	Monsanto Company	2–03–99	Corn plants genetically engineered to express a novel protein of pharmaceutical interests..	Florida, Texas
98–274–01r	Monsanto Company	2–04–99	Corn plants genetically engineered to express a novel protein of pharmaceutical interests..	Hawaii

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 3rd day of March 1999.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–5782 Filed 3–8–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–067–2]

Monsanto Co.; Availability of Determination of Nonregulated Status for Potato Genetically Engineered for Insect and Virus Resistance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that certain potato lines developed by Monsanto Company, which have been genetically engineered for resistance to the Colorado potato beetle and potato virus Y, are no longer considered regulated articles under our regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by Monsanto Company in its petition for a determination of nonregulated status, an analysis of other scientific data, and our review of comments received from the public in response to a previous notice announcing our receipt of the Monsanto Company's petition. This notice also announces the availability of our written determination document and its associated environmental assessment and finding of no significant impact.

EFFECTIVE DATE: February 25, 1999.

ADDRESSES: The determination, an environmental assessment and finding of no significant impact, the petition, and all written comments received regarding the petition 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 those documents are requested to call before visiting on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. David Heron, Biotechnology and Biological Analysis, PPQ, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–5141. To obtain a copy of the determination or the environmental assessment and finding of no significant impact, contact Ms. Kay Peterson at (301) 734–4885; e-mail: Kay.Peterson@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

On December 5, 1997, the Animal and Plant Health Inspection Service (APHIS) received a petition (APHIS Petition No. 97–339–01p) from Monsanto Company (Monsanto) of St. Louis, MO, seeking a determination that four NewLeaf® Y potato lines, which have been genetically engineered for resistance to the Colorado potato beetle (CPB) and potato virus Y (PVY) do not present a plant pest risk and, therefore, are not regulated articles under APHIS' regulations in 7 CFR part 340. Subsequently, Monsanto requested that one of the four NewLeaf® Y potato lines, Hilite line HLMT15–46, be withdrawn from consideration in the subject petition.

On July 20, 1998, APHIS published a notice in the **Federal Register** (63 FR 38805–38806, Docket No. 98–067–1) announcing that the Monsanto petition had been received and was available for public review. The notice also discussed the role of APHIS, the Environmental Protection Agency, and the Food and Drug Administration in regulating the subject potato lines and food products derived from them. In the notice, APHIS solicited written comments from the public as to whether these potato lines posed a plant pest risk. The comments were to have been received by APHIS on or before September 18, 1998. During the designated 60-day comment period, APHIS received 6 comments from potato growers and State and national trade associations. All of the comments were in support of the subject petition.

The subject three NewLeaf® Y potato lines include one line of Russet Burbank (RBMT15–101) and two lines of Shepody (SEMT15–02 and SEMT15–15). These three potato lines have been genetically engineered to contain the *cry3A* gene derived from *Bacillus thuringiensis* subsp. *tenebrionis (BTT),* which encodes a protein that is insecticidal to CPB, and the PVY coat protein gene (*PVYcp*), which imparts resistance to PVY. In addition to the *cry3A* gene and the *PVYcp* gene, the subject potato lines contain and express the *nptII* gene, which is used as a selectable marker in the early stages of plant selection. While the two Shepody lines (SEMT15–02 and SEMT15–15) also contain the *aad* marker gene, tests indicate that this gene is not expressed in the potato plants. The subject potato lines were developed through use of the *Agrobacterium tumefaciens* transformation method, and expression of the added genes is controlled in part by gene sequences derived from the plant pathogens A. tumefaciens and figwort mosaic virus.

Russet Burbank potato line RBMT15–101 and Shepody potato lines SEMT15–02 and SEMT15–15 have been considered regulated articles under APHIS' regulations in 7 CFR part 340 because they contain gene sequences derived from plant pathogens. These potato lines have been evaluated in field trials conducted since 1993 under APHIS notifications. In reviewing the notifications, APHIS determined that these field trials, which were conducted under reproductive and physical containment, would not present a risk of plant pest introduction or dissemination.

Determination

Based on its analysis of the data submitted by Monsanto, a review of other scientific data and field tests of the subject potato lines, and an analysis of comments from the public on the subject petition, APHIS has determined that Russet Burbank potato line RBMT15–101 and Shepody potato lines SEMT15–02 and SEMT15–15: (1) Exhibit no plant pathogenic properties and will not pose an increased plant pest risk from the appearance of new plant viruses; (2) are no more likely to become weeds than pest-resistant potato lines developed by traditional plant breeding; (3) are unlikely to increase the weediness potential for any other cultivated or wild species with which they can interbreed; (4) will not harm threatened or endangered species or other organisms, such as bees, that are beneficial to agriculture; and (5) will not cause damage to raw or processed agricultural commodities. Therefore, APHIS has concluded that the subject potato lines and any progeny derived from crosses with other potato varieties will be as safe to grow as potatoes that are not subject to regulation under 7 CFR part 340.

The effect of this determination is that Monsanto's Russet Burbank potato line RBMT15–101 and Shepody potato lines SEMT15–02 and SEMT15–15 are no longer considered regulated articles under APHIS regulations in 7 CFR part 340. Therefore, the requirements pertaining to regulated articles under those regulations no longer apply to the field testing, importation, or interstate movement of the subject potato lines or their progeny. However, importation of Russet Burbank potato line RBMT15–101 and Shepody potato lines SEMT15–02 and SEMT15–15 or seeds capable of propagation are still subject to the restrictions found in APHIS' foreign quarantine notices in 7 CFR part 319.

National Environmental Policy Act

An environmental assessment (EA) has been prepared to examine the potential environmental impacts associated with this determination. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on that EA, APHIS has reached a finding of no significant impact (FONSI) with regard to its determination that Monsanto's Russet Burbank potato line RBMT15–101 and Shepody potato lines SEMT15–02 and SEMT15–15 and lines developed from them are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the EA and the FONSI are available upon request from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 3rd day of March, 1999.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–5780 Filed 3–8–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Uruguay Round Agricultural Safeguard Trigger Levels

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of product coverage and trigger levels for safeguard measures provided for in the Uruguay Round Agreement on Agriculture.

SUMMARY: This notice lists the updated quantity trigger levels for products

which may be subject to additional import duties under the safeguard provisions of the Uruguay Round Agreement on Agriculture. It also includes the quantity level applicable to each of those products.

EFFECTIVE DATE: March 9, 1999.

FOR FURTHER INFORMATION CONTACT: Cathy S. McKinnell, Multilateral Trade Negotiations Division, Foreign Agricultural Service, room 5530–South Building, U.S. Department of Agriculture, Washington, DC 20250–1022 or telephone at (202) 720–6064.

SUPPLEMENTARY INFORMATION: Article 5 of the Uruguay Round Agreement on Agriculture provides that additional import duties may be imposed on imports of products subject to tariffication during the Uruguay Round if certain conditions are met. The agreement permits additional duties to be charged if the price of an individual shipment of imported products falls below the average price for similar goods imported during the years 1986–88 by a specified percentage. It also permits additional duties to be imposed if the volume of imports of an article exceeds the average of the most recent 3 years for which data are available by 5, 10, or 25 percent, depending on the article. These additional duties may not be imposed on quantities for which minimum or current access commitments were made during the Uruguay Round negotiations, and only one type of safeguard, price or quantity, may be applied at any given time to an article.

Section 405 of the Uruguay Round Agreements Act requires that the President cause to be published in the **Federal Register** the agricultural products subject to safeguards, the price and quantity trigger levels which will be applied to these products, and the relevant period for the quantity based safeguard for each product. On Wednesday, January 4, 1995, the Secretary of Agriculture provided the above information including the definition of each product in the Notice of Safeguard Action published in the **Federal Register** at 60 FR 427. The President delegated this duty to the Secretary of Agriculture in Presidential Proclamation No. 6763, dated December 23, 1994. The Secretary of Agriculture further delegated the duty to the Administrator, Foreign Agricultural Service, 7 CFR 2.43(a)(2). The quantity trigger levels must be updated annually based upon import levels during the most recent 3 years. The Annex to this notice contains the updated quantity trigger levels. Additional information on the levels of the additional duties and how they will be applied is provided in subchapter IV of chapter 99 of the Harmonized Tariff Schedule of the United States. These duties became effective January 1, 1995.

Notice

As provided in section 405 of the Uruguay Round Agreements Act, consistent with Article 5 of the Agreement on Agriculture, the safeguard quantity trigger levels previously notified are superceded by the levels indicated in the Annex to this notice.

Issued at Washington, DC this 2d day of March, 1999.

Patrick M. Steel,

Acting Associate Administrator, Foreign Agricultural Service.

Annex

The definitions of these products were provided in the Notice of Safeguard Action published in the **Federal Register**, at 60 FR 427 on Wednesday, January 4, 1995.

Quantity Based Safeguard Trigger:

Beef	891,203 mt.
Mutton	12,051 mt.
Cream	5,729,263 liters.
Evaporated or Condensed Milk	2,956,168 kilograms.
Nonfat Dry Milk	3,313,542 kilograms.
Dried Whole Milk	1,864,488 kilograms.
Dried Cream	650 kilograms.
Dried Whey/Buttermilk	222,488 kilograms.
Butter	6,193,405 kilograms.
Butter Oil and Butter Substitutes	5,812,414 kilograms.
Dairy Mixtures	2,224,071 kilograms.
Blue Cheese	3,183,782 kilograms.
Cheddar Cheese	11,139,531 kilograms.
American Type Cheese	3,939,843 kilograms.
Edam/Gouda Cheese	6,621,244 kilograms.
Italian-Type Cheese	15,148,033 kilograms.
Swiss Cheese with Eye Formation	33,559,160 kilograms.
Gruyere Process Cheese	7,687,097 kilograms.
Lowfat Cheese	3,874,332 kilograms.
NSPF Cheese	49,366,596 kilograms.
Peanuts	49,248 mt.
Peanut Butter/Paste	23,084 mt.
Raw Cane Sugar	2,366,204 mt.
Refined Sugar and Syrups	25,484 mt.
Blended Syrups	0 mt.
Articles Over 65% Sugar	0 mt.
Articles Over 10% Sugar	80,282 mt.
Sweetened Cocoa Powder	2,445 mt.
Chocolate Crumb	15,324,776 kilograms.
Lowfat Chocolate Crumb	78 kilograms.
Infant Formula Containing Oligosaccharides.	45,383 kilograms.
Mixes and Doughs	5,424 mt.
Mixed Condiments and Seasonings	253 mt.
Ice Cream	49,353 liters.
Animal Feed Containing Milk	1,622,296 kilograms.
Short Staple Cotton	17,211,112 kilograms.
Harsh or Rough Cotton	0 mt.
Medium Staple Cotton	9,664 kilograms.
Extra Long Staple Cotton	32,995 kilograms.

Cotton Waste	13,378 kilograms.
Cotton, Processed, Not Spun	383 kilograms.

[FR Doc. 99–5688 Filed 3–8–99; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF COMMERCE

Submission for OMB Review: Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: U.S.-Japan Semiconductor Agreement Data Collection Program Report.

Agency Form Number: ITA–4115P.

OMB Number: 0625–0211.

Type of Request: Regular Submission.

Burden: 1,152 hours (burden and record keeping).

Number of Respondents: 32.

Avg. Hours Per Response: 1.

Needs and Uses: The Data Collection Form is the vehicle by which individual ''Foreign'' (non-Japanese) semiconductor companies voluntarily report their sales to Japan. The information provided by the Data Collection Program (DCP) is used by the U.S. Government to calculate foreign market share in the Japanese semiconductor market to ensure access to the Japanese market gained under the 1986 and 1991 U.S.-Japan Semiconductor Arrangement continues under the 1996 Semiconductor Agreement. The Department of Commerce distributes Form ITA–4115P and the instruction manual to semiconductor companies after their eligibility is checked. The applicant completes the form and then forwards it to Price WaterhouseCoopers, who submits a summary report to the U.S. Department of Commerce/Office of Microelectronics for calculation of foreign (non-Japanese) share of the Japanese market.

Affected Public: Businesses or other for profit institutions.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 482–7340.

Copies of the above information collection can be obtained by calling or writing Linda Engelmeier, Department Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: March 4, 1999.

Linda Engelmeier,

Department Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–5771 Filed 3–8–99; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: National Security Assessment of the U.S. Maritime Industry.

Agency Form Number: None.

OMB Approval Number: None.

Type of Request: New collection of information.

Burden: 8,000 hours.

Average Time Per Response: 4 hours per response.

Number of Respondents: 2,000 respondents.

Needs and Uses: Commerce/BXA, in coordination with the Department of the Navy, Carderock Division, and the Department of Transportation, Maritime Administration is conducting a survey of the U.S. maritime industry in order to assess the health and competitiveness as well as the technology requirements of this critical sector.

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

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, D.C. 20230. She can be reached by via ''e'' mail at LEngel@doc.gov.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20230.

Dated: March 3, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–5772 Filed 3–8–99; 8:45 a.m.]

BILLING CODE 3510–JT–U

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA)

ACTION: To Give Firms an Opportunity to Comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 1/22/99—2/ /99

Firm name	Address	Date petition accepted	Product
P. C. Boards, Inc	3100 S. Santa Fe Ave., Chanute, KS 66720.	01/29/99	Printed circuit boards.
Enhanced Printing Products, Inc., dba Thompson Mfg. Co.	4724 Charles Page Blvd., Tulsa, OK 74127.	01/29/99	Printing machinery.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 1/22/99—2/ /99—Continued

Firm name	Address	Date petition accepted	Product
Harrison Alloys, Inc	398 Middlesex St., Harrison, NJ 07920	01/29/99	Commidity and specialty alloys.
Icicle Seafoods, Inc	4019 21st Ave., West, Seattle, WA 98119.	01/29/99	Fresh and frozen salmon.
Wards Cove Packing Company	88 E. Hamlin St., Seattle, WA 98102	02/01/99	Fresh and frozen salmon.
Atchison Products, Inc	201 Main Street, Atchison, KS 66002	02/01/99	Travel and leather tool belts.
Wolfe and Swickard Machine Co., Inc	P. O. Box 41286, Indianapolis, IN 46241	02/01/99	Machined powertrain sub-assemblies.
Illinois Blower, Inc	750 Industrial Drive, Cary, IL 60013	02/01/99	Centrifugal air blowers.
Record/play Tek, Inc.	110 E. Vistua, St., Bristol, IN 46507	02/03/99	Voice recorders.
Paris Manufacturing Co., Inc	9529 S. Main St., Jonesboro, GA 30236	02/09/99	Steam-air finishing and pressing equipment.
Labeling Systems, Inc	32 Spruce Street, Oakland, NJ 07436	02/10/99	Labeling machinery.
Carl Goldberg Models, Inc.	4734 W. Chicago, Ave., Chicago, IL 60651.	02/10/99	Model airplane kits.
Kem Plastic Playing Cards, Inc	2 Beck Place, Poughkeepsie, NY 12601	02/12/99	Plastic playing cards.
Select Medical Systems, Inc	2 Wintersport Lane, Williston, VT 05495	02/12/99	Infertility devices for sperm collection.
General Pneumatics Corporation	440 Washington St., Orange, NJ 07050	02/18/99	Pneumatic and hydraulic pressure reducing valves.
Outsource Solutions, Inc	115 Industrial Blvd., McKinney, TX 75069.	02/19/99	Printed circuit boards.
Bergamot Brass Works, Inc	820 Wisconsin St., Delavan, WI 53115	02/19/99	Decorative cast metal products.
Multiplex Technologies, Inc	9441 Baythrone Dr., Houston, TX 77041	02/19/99	Printed circuit boards.
Big Jim Halter Co., Inc., dba Flying Circle Bag.	10045 Johns Road, Boerne, TX 78006	02/19/99	Textile bags for travel, sports and similar bags.
Q.Q.Q., Inc	4361 Pell Drive, Sacramento, CA 95838	02/19/99	Printed circuit boards.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: February 25, 1999.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 99–5326 Filed 3–8–99; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

President's Export Council Subcommittee on Export Administration; Notice of Partially Closed Meeting

A partially closed meeting of the President's Export council Subcommittee on Export Administration (PECSEA) will be held March 24, 1999, 9:00 a.m., at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 4832, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons.

Public Session

1. Opening remarks by the Chairman.

2. Presentation of papers or comments by the public.

3. Update on Administration export control initiatives.

4. Task Force reports.

Closed Session

5. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

The General Session of the meeting is open to the public and a limited number of seats will be available. Reservations are not required. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that public presentation materials or comments be forwarded before the meeting to the address listed below: Ms. Lee Ann Carpenter, Advisory Committees MS: 3876, Bureau of Export Administration, 15th St. & Pennsylvania Ave., NW., U.S. Department of Commerce, Washington, DC 20230.

A Notice of Determination to close meetings, or portions of meetings, of the Subcommittee to the public on the basis of 5 U.S.C. 522(c)(1) was approved October 16, 1997, in accordance with the Federal Advisory Committee Act. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC. For further

information, contact Ms. Lee Ann Carpenter on (202) 482–2583.

Dated: March 3, 1999.

Iain S. Baird,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 99–5683 Filed 3–8–99; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

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

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with Sec. 351.213 of the Department of Commerce (the Department) Regulations (19 CFR 351.213 (1997)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review

Not later than that last day of March 1999, interested parties may request an administrative review of the following orders, findings or suspended investigations, with anniversary dates in March for the following periods:

Antidumping duty proceedings	Period
Australia: Canned Bartlett Pears A–602–039	03/01/98–02/28/99
Bangladesh: Cotton Stop Towels A–538–802	03/01/98–02/28/99
Brazil: Hot Rolled Lead & Bismuth Carbon Steel Products A–351–811	03/01/98–02/28/99
Brazil: Ferrosilicon A–351–820	03/01/98–02/28/99
Canada: Iron Construction Castings A–122–503	03/01/98–02/28/99
Chile: Fresh Cut Flowers A–337–602	03/01/98–02/28/99
Colombia: Fresh Cut Flowers A–301–602	03/01/98–02/28/99
Ecuador: Fresh Cut Flowers A–331–602	03/01/98–02/28/99
Finland: Viscose Rayon Staple Fiber A–405–071	03/01/98–02/28/99
France: Brass Sheet & Strip A–427–602	03/01/98–02/28/99
France: Hot Rolled Lead & Bismuth Carbon Steel Products A–427–804	03/01/98–02/28/99
Germany: Brass Sheet & Strip A–428–602	03/01/98–02/28/99
Germany: Hot Rolled Lead & Bismuth Carbon Steel Products A–428–811	03/01/98–02/28/99
India: Sulfanilic Acid A–533–806	03/01/98–02/28/99
Israel: Oil Country Tubular Goods A–508–602	03/01/98–02/28/99
Italy: Brass Fire Protection Products A–475–401	03/01/98–02/28/99
Italy: Brass Sheet & Strip A–475–601	03/01/98–02/28/99
Japan: Television Receivers A–588–015	03/01/98–02/28/99
Japan: Stainless Steel Butt-Weld Pipe Fittings A–588–702	03/01/98–02/28/99
Japan: Defrost Timers A–588–829	03/01/98–02/28/99
Mexico: Carbon Steel Wire Rope A–201–806	03/01/98–02/28/99
People's Republic of China: Chloropicrin A–570–002	03/01/98–02/28/99
People's Republic of China: Ferrosilicon A–570–819	03/01/98–02/28/99
People's Republic of China: Glycine A–570–836	03/01/98–02/28/99
South Korea: Carbon Steel Wire Rope A–580–811	03/01/98–02/28/99
Spain: Stainless Steel Bar A–469–805	03/01/98–02/28/99
Sweden: Brass Sheet & Strip A–401–601	03/01/98–02/28/99
Taiwan: Light-Walled Rect. Welded Carbon Steel Pipe & Tube A–583–803	03/01/98–02/28/99
Thailand: Welded Carbon Steel Pipe & Tube A–549–502	03/01/98–02/28/99
United Kingdom: Hot Rolled Lead & Bismuth Carbon Steel Products A–412–810	03/01/98–02/28/99
COUNTERVAILING DUTY PROCEEDINGS	
Brazil: Castor Oil Products C–351–029	01/01/98–12/31/98
Brazil: Cotton Yarn C–351–037	01/01/98–12/31/98
Brazil: Hot Rolled Lead & Bismuth Carbon Steel Products C–351–812	01/01/98–12/31/98
Chile: Fresh Cut Flowers C–337–601	01/01/98–12/31/98
France: Brass Sheet & Strip C–427–603	01/01/98–12/31/98
France: Hot Rolled Lead & Bismuth Carbon Steel Products C–427–805	01/01/98–12/31/98
Germany: Hot Rolled Lead & Bismuth Carbon Steel Products C–428–812	01/01/98–12/31/98
India: Sulfanilic Acid C–533–807	01/01/98–12/31/98
Iran: In-Shell Pistachio Nuts C–507–501	01/01/98–12/31/98
Israel: Oil Country Tubular Goods C–508–601	01/01/98–12/31/98
Netherlands: Fresh Cut Flowers C–421–601	01/01/98–12/31/98
Pakistan: Cotton Shop Towels C–535–001	01/01/98–12/31/98
Turkey: Certain Welded Carbon Steel Line Pipe C–489–502	01/01/98–12/31/98
Turkey: Welded Carbon Steel Pipe & Tube C–489–502	01/01/98–12/31/98
United Kingdom: Hot Rolled Lead & Bismuth Carbon Steel Products C–412–811	01/01/98–12/31/98
SUSPENSION AGREEMENTS	
Venezuela: Gray Portland Cement And Cement Clinker C–307–804	01/01/98–12/31/98

In accordance with section 351.213 of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary

conduct an administrative review. The Department has changed its requirements for requesting reviews for countervailing duty orders. Pursuant to 771(9) of the Act, an interested party must specify the individual producers or exporters covered by the order or suspension agreement for which they are requesting a review (Department of Commerce Regulations, 62 FR 27295, 27494 (May 19, 1997)). Therefore, for both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporter covered by an antidumping finding or an antidumping or countervailing duty order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(1)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the Federal Register a notice of Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation for requests received by the last day of March 1999. If the Department does not receive, by the last day of March 1999, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: March 3, 1999.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–5795 Filed 3–8–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–002]

Final Results of Expedited Sunset Review: Chloropicrin from the People's Republic of China

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

ACTION: Notice of final results of expedited sunset review: chloropicrin from the People's Republic of China

SUMMARY: On November 2, 1998, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping order on chloropicrin from the People's Republic of China (63 FR 58709) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate and substantive comments filed on behalf of the domestic industry and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of the Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: March 9, 1999.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) (''*Sunset Regulations*''). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

Scope

The merchandise subject to this antidumping order is chloropicrin, also known as trichloronitromethane. A major use of the product is as a pre-plant soil fumigant (pesticide). Such merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item number 2904.90.50. The HTS item number is provided for convenience and U.S. Customs purposes. The written description remains dispositive.

This review covers imports from all manufacturers and exporters of chloropicrin from the People's Republic of China (''PRC'').

Background

On November 2, 1998, the Department initiated a sunset review of the antidumping order on chloropicrin from the PRC (63 FR 58709), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of ASHTA Chemicals, Inc., HoltraChem Manufacturing Company, L.L.C., Niklor Chemical Company, Inc., and Trinity Manufacturing, Inc. (collectively ''the domestic interested parties''), on November 13, 1998, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations.* Each company claimed interested party status under section 771(9)(C) of the Act, as a U.S. manufacturer of a domestic like product. The domestic interested parties note that LCP Chemicals & Plastics, Inc. (''LCP'')[1] and Niklor Chemical Company, Inc. filed the original petition in this proceeding. We received a complete substantive response from the domestic interested parties on December 2, 1998, within the 30-day deadline specified in the Sunset Regulations under section 351.218(d)(3)(i). We did not receive a substantive response from any respondent interested party to this proceeding. As a result, pursuant to 19

[1] The Hanlin Group, Inc., the parent company of LCP, continued to participate in this case until 1993.

CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day, review of this order.

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-averaged dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission (''the Commission'') the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (''URAA''), specifically the Statement of Administrative Action (''the SAA''), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin,* the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.3). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where: (a) Dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In addition to guidance on likelihood provided in the *Sunset Policy Bulletin* and legislative history, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a response from any interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations,* this constitutes a waiver of participation.

The antidumping order on chloropicrin from the PRC was published in the **Federal Register** on March 22, 1984 (49 FR 10691). Since the imposition of the order, the Department has conducted one administrative review.[2] The order remains in effect for all manufacturers and exporters of the subject merchandise.

The domestic interested parties argue that the Department should determine that there is a likelihood that dumping would continue were the order revoked for four reasons. First, according to the domestic interested parties, imports of the subject merchandise ceased after imposition of the order. The domestic interested parties argue that, according to the Commission's final determination in March, 1984, imports of chloropicrin ceased in September 1983 after the Department's preliminary antidumping determination.[3] Second, there are significant imports to the United States of nitromethane from the PRC, a product that is used in the production of chloropicrin. The domestic interested parties argue that this indicates that the PRC producers have the immediate ability and interest to export chloropicrin to the United States and sell it at less than fair value. Third, chloropicrin is a price-competitive, commodity-type product which could provide an opportunity for PRC producers to capture a large percentage of the market if the order were revoked. And finally, a dumping margin of 58 percent on imports of PRC chloropicrin continues in effect for all PRC exporters (*see* December 2, 1998, Substantive Response of the Domestic Interested Parties at 10).

In making its determination, the Department considers the existence of dumping margins and the volume of imports before and after the issuance of the order. As discussed in section II.A.3 of the *Sunset Policy Bulletin,* the SAA at 890, and the House Report at 63–64, if companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed. In the instant proceeding, a dumping margin above *de minimis* continues to exist for shipments of the subject merchandise from The China National Chemicals Import and Export Corporation (''SINOCHEM'') and William Hunt & Co. of Hong Kong, a third country reseller.[4]

The Department also reviewed data on the volume of imports before and after issuance of the order, consistent with section 752(c) of the Act. The Department examined U.S. Census data (IM146 reports) for the years preceding the imposition of the order through the present. This information demonstrates that exports of chloropicrin from the PRC decreased sharply after the imposition of the order. In 1982, exports of the subject merchandise to the United States exceeded 1.25 million kilograms and, in 1983, exports of the subject merchandise to the United States exceeded 2.45 million kilograms. However, in 1985, the year after the imposition of the order, this volume fell to zero. In the years following the imposition of the order, exports of chloropicrin to the United States never reached their pre-order level and have, for the majority of the interim years, remained below 200,000 kilograms per year. Based on this analysis, the Department finds that the imports of the subject merchandise have fallen significantly since the imposition of the order.

We find the existence of deposit rates above *de minimis* levels and the reduction in export volumes over the life of the order is highly probative of the likelihood of continuation or recurrence of dumping.[5] Dumping margins continue in effect for exports of the subject merchandise by all known PRC exporters and third country resellers. Given that dumping margins have continued over the life of the order, respondent interested parties waived participation in the sunset review, and absent argument and evidence to the contrary, the

[2] *See Chloropicrin from the People's Republic of China; Final Results of Administrative Review of Antidumping Order,* 50 FR 2844 (January 22, 1985).

[3] *See Chloropicrin From the People's Republic of China,* Inv. 731–TA–130 (Final), USITC Pub. No. 1505 (March 1984) at A–8.

[4] The dumping margin for both SINOCHEM and William Hunt & Co. is 58 percent. *See Chloropicrin from The People's Republic of China; Final Results of Administrative Review of Antidumping Order;* 50 FR 2844 (January 22, 1985).

[5] The SAA at 890, and the House Report at 63–64, state that the ''[e]xistence of dumping margins after the order, or the cessation of imports after the order, is highly probative of the likelihood of continuation or recurrence of dumping. If companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were removed.''

Department determines that dumping is likely to continue if the order were revoked.

Because the Department based this determination on the continued existence of margins above *de minimis* and respondent interested parties' waiver of participation, it is not necessary to address the domestic interested parties' arguments concerning non-U.S. export markets, exports of nitromethane, or the price-competitive nature of chloropicrin.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the ''all others'' rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

The Department published, in the **Federal Register**, the antidumping duty order for chloropicrin from the PRC on March 22, 1984 (49 FR 10691). In this order, the Department established a weighted-averaged margin for SINOCHEM of 58 percent. Also, in this order, the Department established a weighted-averaged margin for any other manufacturer/exporter of the subject merchandise of 58 percent.[6] We note that, to date, the Department has not issued any duty absorption findings in this case.

In its substantive response, the domestic interested parties recommended that, consistent with the *Sunset Policy Bulletin*, the Department provide to the Commission the original dumping margin of 58 percent established by the Department for all PRC manufacturers/exporters of chloropicrin.

The Department agrees with the domestic interested parties' argument concerning the choice of the margin to report to the Commission. In the original investigation, the Department calculated a margin for SINOCHEM and established an ''all others'' rate for the remaining companies. The margin from the original investigation is the only calculated rate that reflects the behavior of exporters without the discipline of the order. Therefore, consistent with the *Sunset Policy Bulletin*, we will report to the Commission the company-specific rate for SINOCHEM and the ''all others'' rate from the original investigation for all remaining companies as the dumping margin likely to prevail if the order were revoked. These margins are contained in the **FINAL RESULTS OF REVIEW** section of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/Exporter	Margin (percent)
SINOCHEM	58.0
All Other Manufacturers/Exporters	58.0

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 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 five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: March 3, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–5793 Filed 3–8–99; 8:45 am]

BILLING CODE 3510–DS–P

[6] *See Antidumping Duty Order; Chloropicrin from the People's Republic of China,* 49 FR 10691 (March 22, 1984).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Notice of Extension of Time Limit for Administrative Review

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

ACTION: Notice of Extension of Time Limit.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the eleventh review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China. The period of review is June 1, 1997 through May 31, 1998. This extension is made pursuant to Section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (''the Act'').

EFFECTIVE DATE: March 9, 1999.

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

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the originally anticipated time limit (i.e., March 2, 1999), the Department of Commerce (''the Department'') is extending the time limit for completion of the preliminary results to not later than June 30, 1999, in accordance with section 751(a)(3)(A) of the Act. *See* March 2, 1999 Memorandum from Deputy Assistant Secretary for AD/CVD Enforcement Richard W. Moreland to Assistant Secretary for Import Administration Robert LaRussa on file in the public file of the Central Records Unit, B–099 of the Department.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 2, 1999.

Richard W. Moreland,

Deputy Assistant Secretary for AD/CVD Enforcement.

[FR Doc. 99–5792 Filed 3–8–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

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

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

Docket Number: 98–067. *Applicant:* Johns Hopkins University, Baltimore,

MD 21218. *Instrument:* Electron Microscope, Model CM300. *Manufacturer:* Philips, The Netherlands. *Intended Use:* See notice at 64 FR 4843, February 1, 1999. *Order Date:* December 10, 1997.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as the instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered. *Reasons:* The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–5794 Filed 3–8–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030199C]

Mid-Atlantic Fishery Management Council (MAFMC); Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Scientific & Statistical Committee (SSC), Tilefish Committee, and Tilefish Advisory Panel will hold public meetings.

DATES: On Wednesday, March 31, 1999 the SSC will meet from 10:00 a.m. until 5:00 p.m. On Thursday, April 1, 1999 the Tilefish Committee and the Tilefish Advisory Panel will meet from 9:00 a.m. until 4:00 p.m.

ADDRESSES: These meetings will be held at the Radisson Hotel Philadelphia Airport, 500 Stevens Drive, Philadelphia, PA; telephone: 610–521–5900.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: On March 31, 1999 the SSC will review the assessment and make recommendations on the status of tilefish resources. On April, 1, 1999 the Tilefish Committee and the Tilefish Advisory Panel will meet to review the SSC recommendations and develop recommendations on Essential Fish Habitat (EFH) and fishery management measures.

Although other issues not contained in this agenda may come before the Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

March 3, 1999.

Gary C. Matlock,

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

[FR Doc. 99–5799 Filed 3–8–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Modernization Transition Committee (MTC)

ACTION: Notice of public meeting.

TIME AND DATE; March 24, 1999 beginning at 8 a.m.

PLACE: This meeting will take place at the Silver Spring Holiday Inn, 8777 Georgia Avenue, Silver Spring, Maryland.

STATUS: The meeting will be open to the public. The time between 11:30 a.m. and 12 noon will be set aside for public comments. Approximately 50 seats will be available to the public on a first-come, first-served basis.

MATTERS TO BE CONSIDERED: This meeting will include status updates on the Huntsville, Alabama, proposed certifications; consultation on the FY 2000 National Implementation Plan; a Fire Weather program presentation; and a report on the NWS Modernization status.

CONTACT PERSON FOR MORE INFORMATION: Nicholas Scheller, National Weather Service, Modernization Staff, 1325 East-West Highway, Silver Spring, Maryland 20910–3283. Telephone: 301–713–0454.

John E. Jones, Jr.,

Deputy Assistant Administrator for Weather Services.

[FR Doc. 99–5743 Filed 3–8–99; 8:45 am]

BILLING CODE 3510–KE–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021299D]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings revision.

SUMMARY: The New England Fishery Management Council (Council) has modified a meeting of its Groundfish Oversight Committee for March 22, 1999. The meeting will now be a joint meeting of the Groundfish Advisory Panel and Groundfish Committee.

DATES: The meeting will be held on March 22, 1999. See SUPPLEMENTARY INFORMATION for specific dates and times.

ADDRESSES: The meeting will be held in Peabody, MA. See **SUPPLEMENTARY INFORMATION** for specific locations.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (781) 231–0422. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1036; telephone: (781) 231–0422.

SUPPLEMENTARY INFORMATION: The original notice (64 FR 8330, February 19, 1999) stated that only the Groundfish Committee would meet on Monday, March 22, 1999. The meeting has been rescheduled to meet jointly as a Groundfish Advisory Panel and Groundfish Committee.

Monday, March 22, 1999, 9:30 a.m.—Joint meeting of the Groundfish Oversight Committee and Advisors

Location: Holiday Inn, One Newbury Street (Rt. 1 North), Peabody, MA 01960, phone: (978) 535–4600; fax: (978) 535–8238.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other

auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

All other previously published information remains unchanged.

Dated: March 3, 1999.

Gary C. Matlock,

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

[FR Doc. 99–5800 Filed 3–8–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030199D]

Endangered Species; Permits

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

ACTION: Receipt of applications for new scientific research permits (1202, 1203), receipt of an amendment to an application for a scientific research permit (1129), and receipt of a request to modify an existing scientific research permit (1114).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement: NMFS has received new permit applications from the U.S. Forest Service in Corvallis, OR (USFS) (1202) and from the Washington Department of Fish and Wildlife in Olympia, WA (WDFW)(1203); NMFS has received an amendment to a pending application from WDFW (1129); and NMFS has received a request to modify an existing permit from WDFW (1114).

DATES: Written comments or requests for a public hearing on any of the new applications or modification requests must be received on or before April 8, 1999.

ADDRESSES: The applications and related documents are available for review in the following office, by appointment: Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

All documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

FOR FURTHER INFORMATION CONTACT: For permit 1129: Leslie Schaeffer, Portland, OR (503–230–5433).

For permits 1114, 1202, and 1203: Tom Lichatowich, Portland, OR (503–230–5438)

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications as required by the ESA, is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Permits and modifications are issued in accordance with and are subject to parts 217–222 of Title 50 CFR, the NMFS regulations governing listed species permits.

Species Covered in this Notice

The following species and evolutionarily significant units (ESU's) are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): Upper Columbia River (UCR) spring, Snake River (SnR) spring/summer and Steelhead trout (*O. mykiss*): Lower Columbia River (LCR), UCR.

To date, neither a listing determination for UCR spring chinook salmon under the ESA, nor protective regulations for threatened LCR steelhead under section 4(d) of the ESA have been promulgated by NMFS. This notice of receipt of applications requesting takes of these species is issued as a precaution in the event that NMFS issues an UCR spring chinook salmon listing determination and/or LCR steelhead protective regulations. The initiation of a 30-day public comment period on the applications, including their proposed takes of UCR spring chinook salmon and/or LCR steelhead, does not presuppose a listing determination or the contents of the eventual protective regulations, respectively.

New Applications Received

USFS (1202) requests a 5-year permit authorizing direct takes of juvenile, threatened, LCR steelhead associated with three salmonid monitoring studies in the Clackamas River and tributaries. In study 1, USFS proposes to evaluate the downstream migration of juvenile salmonids. The fish will be captured with screw traps, anesthetized, tagged with passive integrated transponders (PIT) tags, and released. For study 2, USFS proposes to conduct a catch and effort study. Juvenile salmonids will be captured with fly fishing gear, anesthetized, PIT tagged, and released. In study 3, USFS proposes to use snorkel surveys to count juvenile salmonids. Data from these three studies will be used to assess the survival of downstream salmonids as they pass through various habitats. USFS has also requested some indirect mortalities of the ESA-listed, juvenile fish associated with the research.

WDFW (1203) requests a 5-year permit, for takes of adult and juvenile, UCR spring chinook salmon associated with five research studies in UCR tributaries and the mainstem river in anticipation of a possible listing decision of this species by NMFS. In study 1, WDFW proposes to assess migrating juvenile salmonid populations. The fish will be captured with screw traps, anesthetized, sampled for biological data and released downstream. In study 2, WDFW proposes to trap returning adults at fish ladders, record biological information, and release them upstream. In study 3, WDFW proposes to survey the spawning grounds to identify redds and collect biological data from carcasses. In study 4, WDFW proposes to assess the capacity of salmonid habitat. Juvenile salmonids will be captured using electroshockers, seines, and other techniques; anesthetized; sampled for biological data; and released. In study 5, WDFW proposes to conduct presence/absence studies by using electroshockers to determine the distribution of salmonids in various watersheds. Data from these five studies will provide managers valuable information that will be used to assess the survival of migrating juvenile salmonids, the abundance of adults on spawning grounds, the annual success of spawners, and the relative abundance of salmonids in the available habitat. WDFW has also requested some indirect mortalities of the ESA-listed, juvenile fish associated with the research.

Amended Application

On March 24, 1998, a notice was published (63 FR 14069) that NMFS had received an application (1129) for a 5-year permit from WDFW that would authorize takes of adult and juvenile, threatened, naturally produced and artificially propagated, SnR spring/summer chinook salmon associated with a supplementation program at the Tucannon River and Lyons Ferry Hatcheries. NMFS has received an amendment to that application requesting the initiation of a captive broodstock program for Tucannon River spring chinook salmon. The goal of the captive broodstock program is for the short term rebuilding of the Tucannon River spring chinook salmon run because of poor expected runs through the year 2001. Supplementation fish are

proposed to be selected for the captive broodstock program. The amendment also requests the use of remote site incubators to reseed the uppermost reaches of the Tucannon River with spring chinook salmon to aid in the long term recovery and rebuilding of the spring chinook salmon run. Eggs for these incubators would come from the Tucannon River spring chinook supplementation program or from the captive broodstock program. WDFW has also requested some indirect mortalities of the ESA-listed, juvenile fish associated with the research/enhancement activities.

Modification Request Received

WDFW requests modification 2 to permit 1114, which authorizes annual direct takes of adult and juvenile, endangered, naturally produced and artificially propagated, UCR steelhead associated with a smolt monitoring program at Rock Island Dam. For modification 2, WDFW requests takes of juvenile, UCR spring chinook salmon in anticipation of a possible listing decision of this species by NMFS. The requested takes are associated with a proposed research program designed to collect information on juvenile salmonid migration timing, survival, travel timing, and general fish health. The data will be used to make in-season adjustments to water releases from upstream reservoirs that optimize downstream migration conditions. Juvenile salmonids will be collected in a permanent inclined screen trap, anesthetized, examined and/or PIT tagged, allowed to recover from the anesthetic, and released. WDFW has also requested some indirect mortalities of the ESA-listed, juvenile fish associated with the research/enhancement activities. Modification 2 is requested to be valid for the duration of the permit, which expires on December 31, 2002.

Dated: March 2, 1999.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–5796 Filed 3–8–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Technology Administration

National Medal of Technology Nomination Evaluation Committee (NMTNEC)

AGENCY: Technology Administration, U.S. Department of Commerce.

ACTION: Notice of Recruitment for Additional Members for NMTNEC.

SUMMARY: The Department of Commerce, Technology Administration (TA), requests nominations of individuals for appointment to the National Medal of Technology Nomination Evaluation Committee (NMTNEC). The Committee provides advice to the Secretary on the implementation of Pub. L. 96–480 (15 U.S.C. 3711) under the Federal Advisory Committee Act, 5 U.S.C. app. 2. The terms of several current members have expired and the period of nominations will identify their replacement.

DATES: Please submit nominations by March 24, 1999.

ADDRESSES: Submit nominations to the National Medal of Technology Program Office, Technology Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Room 4226, Washington, DC 20230. Materials may be faxed to 202–501–8153.

FOR FURTHER INFORMATION CONTACT: Allison A. Rosenberg, Director, 202–482–5572.

SUPPLEMENTARY INFORMATION: The National Medal of Technology was rechartered on December 8, 1997, for a period of two years to provide advice to the Secretary on the implementation of Pub. L. 96–480 (15 U.S.C. 3711) under the Federal Advisory Committee Act, 5 U.S.C. app. 2. The National Medal of Technology Nomination Evaluation Committee (NMTNEC) serves as an advisory body to the Under Secretary of Technology in his capacity as Chair of the Steering Committee, which reports directly to the Secretary of Commerce. Members are responsible for reviewing nominations and making recommendations for the nation's highest honor for technological innovation, awarded annually by the President of the United States. Members of the NMTNEC have an understanding of, and experience in, developing and utilizing technological innovation and/or they are familiar with the education, training, employment and management of technological human resources.

Under the Federal Advisory Committee Act, membership in a committee constituted under the Act must be balanced. To achieve balance, the Department is seeking additional nominations of candidates from small, medium-sized, and large businesses or with special expertise in the following subsectors of the technology enterprise:

(1) Manufacturing and Process Quality Technologies;

(2) Infrastructure and Transportation Technologies, Structural Materials; and

(3) Microelectronics, software, and telecommunications.

Typically, committee members are present or former Chief Executive Officers or other senior leaders of corporations; presidents or distinguished faculty of universities; or senior executives of non-profit organizations. They offer stature by virtue of their positions and also possess first-hand knowledge of the forces driving future directions for their industries or fields of expertise. The Committee as a whole is balanced in representing geographical, professional, and diversity interests. Nominees must be U.S. citizens, must be able to fully participate in meetings pertaining to the review and selection of finalists for the National Medal of Technology, and must uphold the confidential nature of an independent peer review and competitive selection process.

The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse NMTNEC membership.

Gary R. Bachula,

Under Secretary (Acting), Technology Administration.

[FR Doc. 99–5730 Filed 3–8–99; 8:45 am]

BILLING CODE 3510–18–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0067]

Submission for OMB Review; Comment Request Entitled Incentive Contracts

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Incentive Contracts. A request for public comments was published at 63 FR 71099, December 23, 1998. No comments were received.

DATES: Comments may be submitted on or before April 8, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0067, Incentive Contracts, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Federal Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

Incentive contracts are normally used when a firm fixed-price contract is not appropriate and the required supplies or services can be acquired at lower costs, and sometimes with improved delivery or technical performance, by relating the amount of profit or fee payable under the contract to the contractor's performance.

The information required periodically from the contractor—such as cost of work already performed, estimated costs of further performance necessary to complete all work, total contract price for supplies or services accepted by the Government for which final prices have been established, and estimated costs allocable to supplies or services accepted by the Government and for which final prices have not been established—is needed to negotiate the final prices of incentive-related items and services.

The contracting officer evaluates the information received to determine the contractor's performance in meeting the incentive target and the appropriate price revision, if any, for the items or services.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, *3,000;* responses per respondent, *1;* total annual responses, *3,000;* preparation hours per response, *1;* and total response burden hours, *3,000.*

Obtaining Copies of Proposals

Requester may obtain copies of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0067, Incentive Contracts, in all correspondence.

Dated: March 3, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–5805 Filed 3–8–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0062]

Submission for OMB Review; Comment Request Entitled Material and Workmanship

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Material and Workmanship. A request for public comments was published at 63 FR 71101, December 23, 1998. No comments were received.

DATES: Comments may be submitted on or before April 8, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0062, Material and Workmanship, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Jack O'Neill, Federal Acquisition Policy Division, GSA (202) 501–3856.

SUPPLEMENTARY INFORMATION:

A. Purpose

Under Federal contracts requiring that equipment (e.g., pumps, fans, generators, chillers, etc.) be installed in a project, the Government must determine that the equipment meets the contract requirements. Therefore, the contractor must submit sufficient data on the particular equipment to allow the Government to analyze the item.

The Government uses the submitted data to determine whether or not the equipment meets the contract requirements in the categories of performance, construction, and durability. This data is placed in the contract file and used during the inspection of the equipment when it arrives on the project and when it is made operable.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *.25* hours per completion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *3,160;* responses per respondent, *1.5;* total annual responses, *4,740;* preparation hours per response, *.25;* and total response burden hours, *1,185.*

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0062, Material and Workmanship, in all correspondence.

Dated: March 3, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–5806 Filed 3–8–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0058]

Submission for OMB Review; Comment Request Entitled Schedules for Construction Contracts

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR)

Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Schedules for Construction Contracts. A request for public comments was published at 63 FR 71100, December 23, 1998. No comments were received.

DATES: Comments may be submitted on or before April 8, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0058, Schedules for Construction Contracts, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Jack O'Neill, Federal Acquisition Policy Division, GSA (202) 501–3856.

SUPPLEMENTARY INFORMATION:

A. Purpose

Federal construction contractors may be required to submit schedules, in the form of a progress chart, showing the order in which the contractor proposes to perform the work. Actual progress shall be entered on the chart as directed by the contracting officer. This information is used to monitor progress under a Federal construction contract when other management approaches for ensuring adequate progress are not used.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *1* hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *2,600*; responses per respondent, *2*; total annual responses, *5,200*; preparation hours per response, *1*; and total response burden hours, *5,200*.

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0058, Schedules for Construction Contracts, in all correspondence.

Dated: March 3, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–5807 Filed 3–8–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0060]

Submission for OMB Review; Comment Request Entitled Accident Prevention Plans and Recordkeeping

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Accident Prevention Plans and Recordkeeping. A request for public comments was published at 63 FR 71101, December 23, 1998. No comments were received.

DATES: Comments may be submitted on or before April 8, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW., Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0060, Accident Prevention Plans and Recordkeeping, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Jack O'Neill, Federal Acquisition Policy Division, GSA (202) 501–3856.

SUPPLEMENTARY INFORMATION:

A. Purpose

The clause ''Accident Prevention'' (48 CFR 52.236–13) requires Federal construction contractors to keep records of accidents incident to work performed under the contract that result in death, traumatic injury, occupational disease or damage to property, materials, supplies or equipment. Records of personal inquiries are required by OSHA (OMB Control No. 1220–0029). The Federal Acquisition Regulation requires records of damage to property, materials, supplies or equipment to provide background information when claims are brought against the Government.

If the contract involves work of a long duration, the contractor must submit a written proposal for implementation of the clause. The Accident Prevention Plan, for projects that are hazardous or of long duration, is analyzed by the Contracting Officer along with the agency safety representatives to determine if the proposed plan will meet the requirement of the safety regulations and applicable statutes. The records maintained by the contractor are used to evaluate compliance and may be used in workmen's compensation cases. The Accident Prevention Plan is placed in the contract file for reference.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 2 hours per completion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *2,106*; responses per respondent, *2*; total annual responses, *4,212*; preparation hours per response, *2*; and total response burden hours, *8,424*.

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0060, Accident Prevention Plans and Recordkeeping, in all correspondence.

Dated: March 3, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–5808 Filed 3–8–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0064]

Submission for OMB Review; Comment Request Entitled Organization and Direction of Work

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Organization and Direction of Work. A request for public comments was published at 63 FR 71102, December 23, 1998. No comments were received.

DATES: Comments may be submitted on or before April 8, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0064, Organization and Direction of Work, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Jack O'Neill, Federal Acquisition Policy Division, GSA (202) 501–3856.

SUPPLEMENTARY INFORMATION:

A. Purpose

When the Government awards a cost-reimbursement construction contract, the contractor must submit to the contracting officer and keep current a chart showing the general executive and administrative organization, the personnel to be employed in connection with the work under the contract, and their respective duties. The chart is used in administration of the contract and as an aid in determining cost. The chart is used by contract administration personnel to assure the work is being properly accomplished at reasonable prices.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *.75* hours per completion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *50;* responses per respondent, *1;* total annual responses, *50;* preparation hours per response, *.75;* and total response burden hours, *38.*

Obtaining copies of proposals:

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0064, Organization and Direction of Work, in all correspondence.

Dated: March 3, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–5809 Filed 3–8–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0032]

Submission for OMB Review; Comment Request Entitled Contractor Use of Interagency Motor Pool Vehicles

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Contractor Use of Interagency Motor Pool Vehicles. A request for public comments was published at 63 FR 71929, December 30, 1998. No comments were received.

DATES: Comments may be submitted on or before April 8, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0032, Contractor Use of Interagency Motor Pool Vehicles, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Federal Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

If it is in the best interest of the Government, the Contracting officer may authorize cost-reimbursement contractors to obtain, for official purposes only, interagency motor pool vehicles and related services. Contractors' requests for vehicles must contain two copies of the agency authorization, the number of vehicles and related services required and period of use, a list of employees who are authorized to request the vehicles, a listing of equipment authorized to be serviced, and billing instructions and address.

A written statement that the contractor will assume, without the right of reimbursement from the Government, the cost or expense of any use of the motor pool vehicles and services not related to the performance of the contract is necessary before the contracting officer may authorize cost-reimbursement contractors to obtain interagency motor pool vehicles and related services.

The information is used by the Government to determine that it is in the Government's best interest to authorize a cost-reimbursement contractor to obtain, for official purposes only, interageny motor pool vehicles and related services, and to provide those vehicles.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *30* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *70*; responses per respondent, *2*; total annual responses, *140*; preparation hours per response, *.5*; and total response burden hours, *70*.

Obtaining copies of proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0032, Contractor Use of Interagency Motor Pool Vehicles, in all correspondence.

Dated: March 4, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–5810 Filed 3–8–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0005]

Submission for OMB Review; Comment Request Entitled Architect-Engineer and Related Services Questionnaire for Specific Project (SF 255)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Architect-Engineer and Related Services Questionnaire for Specific Project (SF 255). A request for public comments was published at 63 FR 71098, December 23, 1998. No comments were received.

DATES: Comments may be submitted on or before April 8, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0005, Architect-Engineer and Related Services Questionnaire for Specific Project (SF 255), in all correspondence.

FOR FURTHER INFORMATION CONTACT: Jack O'Neill, Federal Acquisition Policy Division, GSA (202) 501–3856.

SUPPLEMENTARY INFORMATION:

A. Purpose

Standard Form 255 is used by all Executive agencies to obtain information from architect-engineer (A-E) firms interested in a particular project. The information on the form is reviewed by a selection panel composed of professional people and assists the panel in selecting the most qualified A-E firm to perform the specific project. The form is designed to provide a uniform method for A-E firms to submit information on experience, personnel, capabilities of the A-E firm to perform, along with information on the consultants they expect to collaborate with on the specific project.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *1.2* hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *5,000*; responses per respondent, *4*; total annual responses, *20,000*; preparation hours per response, *1.2*; and total response burden hours, *24,000*.

Obtaining copies of proposals:

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0005, Architect-Engineer and Related Services Questionnaire for Specific Project (SF 255), in all correspondence.

Dated: March 3, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division,

[FR Doc. 99–5811 Filed 3–8–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0031]

Submission for OMB Review; Comment Request Entitled Contractor Use of Government Supply Sources

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Contractor Use of Government Supply Sources. A request for public comments was published at 63 FR 71929, December 30, 1998. No comments were received.

DATES: Comments may be submitted on or before April 8, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0031, Contractor Use of Government Supply Sources, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Federal Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

When it is in the best interest of the Government and when supplies and services are required by a Government contract, contracting officers may authorize contractors to use Government supply sources in performing certain contracts. Contractors placing orders under Federal Supply Schedules or Personal Property Rehabilitation Price Schedules must follow the terms of the applicable schedule. To place orders, firms will submit the initial FEDSTRIP or MILSTRIP requisitions or the

Optional Form 347, a copy of the authorization to order, and a statement regarding authorization to the firm holding the schedule contract.

The information informs the schedule contractor that the ordering contractor is authorized to use this Government supply source and fills the ordering contractor's order under the terms of the Government contract.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *15* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *300;* responses per respondent, *7;* total annual responses, *2,100;* preparation hours per response, *.25;* and total response burden hours, *525*.

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0031, Contractor Use of Government Supply Sources, in all correspondence.

Dated: March 4, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–5812 Filed 3–8–99; 8:45 am]

BILLING CODE 6820–34–U

DEPARTMENT OF DEFENSE

Office of the Secretary; Assistance to Local Educational Agencies (LEAs)

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of a program for providing financial assistance to LEAs.

SUMMARY: Pursuant to Section 386 of Pub. L. 102–484, as amended by Section 373 of Pub. L. 103–160, the ''National Defense Authorization Act for Fiscal Year 1994,'' and Section 1074 of Pub. L. 104–106, the ''National Defense Authorization Act for Fiscal Year 1996,'' and pursuant to Section 372 of Pub. L. 105–261, the ''Strom Thurmond National Defense Authorization Act for Fiscal Year 1999,'' October 17, 1998, notice is hereby given of a program to provide financial assistance to eligible LEAs that are impacted by the presence of military dependent children or by the base closure process.

DATES: Applications for financial assistance in response to this notice must be received no later than April 8, 1999.

ADDRESSES: Letters of application must be addressed to: Acting Assistant Secretary of Defense (Force Management Policy), Attn: DoD Education Activity (Fiscal Division), 4040 North Fairfax Drive, Arlington, VA 22203–1635.

FOR FURTHER INFORMATION CONTACT: Ms. Joyce Eastepp, Department of Defense Education Activity (Fiscal Division), 4040 North Fairfax Drive, Arlington, VA 22203–1634; telephone (703) 696–3833, extension 282; facsimile number (703) 696–4029.

SUPPLEMENTARY INFORMATION:

Program Announcement

During Fiscal Year (FY) 1999, the Department of Defense (DoD) is authorized 35 million dollars to assist eligible Local Education Agencies (LEAs) affected by the impact of military dependent students or by reductions in the size of the Armed Forces. DoD shall rely on data from the Department of Education for the purpose of determining eligibility of a LEA.

Pursuant to subsection 386(c) of Pub. L. 102–484, as amended, and subsection 372(a)(1) of Pub. L. 105–261, 30 million dollars will be provided to eligible LEAs for educational agency assistance if without such assistance, such LEAs would be unable to provide their students with a level of education equivalent to the minimum available in other LEAs in the same state, and

(1) at least 20 percent (as rounded to the nearest whole percent) of the students in average daily attendance in the schools of such LEAs in that Fiscal Year 1999 are military dependent students counted under subsection 8003(a) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703(a)(1));

(2) there has been a significant increase, as determined by the Secretary, in the number of military dependent students in average daily attendance in the LEA's schools as a result of relocation of Armed Forces personnel or civilian employees of the Department of Defense or as a result of a realignment of one or more military installations; or

(3) a LEA is a successor of one or more LEAs that was eligible for payments in Fiscal Year 1992 under DoD Instruction 1342.18 (32 CFR Part 240), and satisfies one of the two previously listed criteria.

Pursuant to subsection 386(d) of Pub. L. 102–484, as amended, and subsection 372(a)(2) of Pub. L. 105–261, 5 million dollars is authorized for the Secretary to make educational agency payments to LEAs that are impacted by reductions in the size of the Armed Forces. Eligible LEAs are those that during the period between the end of the school year preceding the fiscal year for which the payments are authorized and the beginning of the school year immediately preceding that school year, had an overall reduction of not less than 20 percent of military dependent students, as a result of closure or realignment of military installations.

Any funds provided under this notice shall be available only for eligible LEAs who (1) exercise due diligence in obtaining state and other financial assistance; (2) are treated the same as other LEAs under state law for the purpose of receiving state aid for public education; and (3) file with the Acting Assistant Secretary of Defense (Force Management Policy), a letter of application (see sample letter at the end of this notice) and a copy of an independently audited financial report on the LEA for the preceding fiscal year.

Applications for financial assistance in response to this notice must be received no later than [30 days after date of publication].

Definitions

For the purposes of this program, the following definitions are applicable:

(a) Applicant. Any LEA requesting assistance under this notice.

(b) Local Education Agency (LEA). A public board of education or other public authority legally constituted within a state for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a state, or such combination of school districts or counties as are recognized in a state as an administrative agency for its public elementary or secondary schools. Such term includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(c) Military Dependent Student. A student that is a dependent child of a member of the Armed Forces or a dependent child of a civilian employee of the Department of Defense.

Amount of Assistance

An applicant requesting assistance under this notice shall submit a letter of application (see sample letter at end of this notice) and a copy of an independently audited financial report of the applicant LEA for the second

preceding FY, requesting a DoD contribution and assuring the Acting ASD (FMP) that the LEA has applied for, has received or shall receive all financial assistance from other sources for which it is qualified. Letters of application must be addressed as follows:

Acting Assistant Secretary of Defense, (Force Management Policy), Attn: DoD Education Activity (Fiscal Division), 4040 North Fairfax Drive, Arlington, VA 22203–1635.

The applicant shall also file a copy of the letter of application for financial assistance and required supportive information with the State Educational Agency (SEA). The SEA may submit comments on the LEA's application to the Department of Defense (at the above address) by [30 days after date of publication]. Such comments shall be considered when applications are reviewed by the Office of the Secretary of Defense. The LEA's application and all required supporting information must reach the Acting ASD (FMP) no later than [30 days after date of publication]. No assurances of confidentiality are being made, other than the assurance that the audits will not be released.

This information collection has been approved as OMB Control Number 0704–0389, with an expiration date of June 30, 2000. The public reporting burden for this collection of information is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports (0704–0389), 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.

Sample Letter of Application For Financial Assistance

Acting Assistant Secretary of Defense,
(Force Management Policy),
Attn: DoD Education Activity (Fiscal Division),
4040 North Fairfax Drive,
Arlington, VA 22203–1635

Dear Mr. Acting Assistant Secretary: Pursuant to this ''Notice of a Program for Providing Financial Assistance to LEAs,'' Federal Register Vol. __, No. __, dated _____, 1999), the (name of the local educational agency (LEA) requests financial assistance for the LEA for school year 1998–1999. We certify that the LEA has applied for financial assistance from all sources, including the State/Commonwealth of (name). We understand that funds available for that purpose shall be paid on a per-pupil basis for military dependent students, as in the ''Notice of a Program for Providing Financial Assistance to LEAs.'' Enclosed is a copy of our independent audit ''(Title)'' prepared by (name of firm or agency). We have submitted a complete and timely application for Section 3 impact aid assistance to the Secretary of Education and have submitted applications for all other assistance for which the LEA may be entitled. This LEA is treated the same as other LEAs under state law for the purpose of state aid for public education. A copy of this letter, with the above supporting information, is being submitted to the State Educational Agency.

Sincerely,
(Authorized LEA Official)

Dated: March 1, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–5527 Filed 3–8–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Thursday, March 18, 1999.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Timothy Doyle, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director Defense Research and Engineering (DDR&E), and through the DDR&E, to the Director Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective research and development program in the field of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military proposes to initiate with industry, universities or in their laboratories. The microelectronics area includes such programs on semiconductor materials, integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with Section 10(d) of Pub. L. 92–463, as amended, (5 U.S.C. App. 10(d) (1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly, this meeting will be closed to the public.

Dated: March 3, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–5684 Filed 3–8–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday, March 16, 1999.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: David Cox, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency (ARPA) and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, university or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. 92–463, as amended, (5 U.S.C. App. 10(d) (1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly, this meeting will be closed to the public.

Dated: March 3, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–5685 Filed 3–8–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday, March 17, 1999.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mr. Eliot Cohen, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, VA 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. 92–463, as amended, (5 U.S.C. App. 10(d) (1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly, this meeting will be closed to the public.

Dated: March 3, 1999.

L.M. Bynum,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–5686 Filed 3–8–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group C (Electro-Optics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday, March 23, 1999.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. 92–463, as amended, (5 U.S.C. App. 10(d) (1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly, this meeting will be closed to the public.

Dated: March 3, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–5687 Filed 3–8–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Army

ARMS Initiative Implementation

AGENCY: Armament Retooling and Manufacturing Support (ARMS) Executive Advisory Committee (EAC).

ACTION: Notice of Meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the next meeting of the Armament Retooling and Manufacturing Support (ARMS) Executive Advisory Committee (EAC). The EAC charters the development of new and innovative methods to optimize the asset value of the Government—Owned, Contractor-Operated ammunition industrial base for peacetime and national emergency requirements, while ensuring—economical and efficient processes at minimal operating costs, matching critical skills, balancing community economic benefits, and becoming a ''model'' for defense conversion. This meeting will update the EAC and public on the status of ongoing actions, new items of interest, and suggested future direction/actions. Topics for this meeting will include—biannual EAC Charter review/renewal; integration of facility competition; stronger community involvement; ARMS Strategic Plan revision addressing reuse, transition and exit strategies, designing defense conversion models; HMX/RDX competition (Holston AAP) relationship to ARMS program, and associated return on investment; and various related topics. This meeting is open to the public.

DATES OF MEETING: April 13–14, 1999.

PLACE OF MEETING: Radisson Quad City Plaza Hotel, 111 E. 2nd Street, Davenport, Iowa 52801.

TIME OF MEETING: 8:00 AM–5:00 PM on April 13 and 14.

FOR FURTHER INFORMATION CONTACT; Mr. Elwood H. Weber, ARMS Task Force, HQ Army Materiel Command, 5001 Eisenhower Avenue, Alexandria, Virginia 22333; Phone (703) 617–9788.

SUPPLEMENTARY INFORMATION: Attendees are encouraged to make reservations as soon as possible by calling Radisson central reservations at (800) 333–3333. EAC and public (Government) attendees should request the ''Government Rate'' when making reservations. To assist in the EAC Meeting administrative support requirements, request that *all* attendees contact the ARMS Team via telephone (309) 782–3360/4090 or email to perezm@ioc.army.mil. Previously registered EAC attendees will confirm database information and new attendees will register at the door. Meeting dress will be corporate casual.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–5778 Filed 3–8–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive licensing

AGENCY: U.S. Army Research Laboratory, Adelphi, Maryland.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patents for non-exclusive, partially exclusive or exclusive licensing. All of the listed patents have been assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.

These patents covers a wide variety of technical arts including: Multilayered Ferroelectric Composite Waveguides, Thin Film Ferroelectric Composites, A Method to Reduce Gun Barrel Erosion, A Method to Dispense Liquid with Gas and A Shaped Charge Device.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Public Law 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wish to license the U.S. patents listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by these patents.

Title: Multilayered Ferroelectric Composite Waveguides.
Inventors: Louise Sengupta and Michael S. Klushens.
Patent Number: 5,830,591.
Issued Date: Nov. 3, 1998.

Title: Method and Apparatus for Liquid Injection to Reduce Gun Barrel Erosion.
Inventor: Aviezer Birk.
Patent Number: 5,841,057.
Issued Date: Nov. 24, 1998.

Title: Method and Apparatus for Dispensing Liquid with Gas.
Inventor: Aviezer Birk.
Patent Number: 5,845,716.
Issued Date: Dec. 8, 1998.

Title: Shaped Charge Device with Multiple Confinements.
Inventor: William Walters.
Patent Number: 5,847,312.
Issued Date: Dec. 8, 1998.

Title: Thin Film Ferroelectric Composites and Method of Making.
Inventors: Sommath Sengutpa and Louise Sengupta.
Patent Number: 5,846,893.
Issued Date: Dec. 8, 1998.

FOR FURTHER INFORMATION CONTACT: Michael Rausa, Technology Transfer Office, AMSRL–CS–TT, U.S. Army Research Laboratory, Aberdeen Proving Ground, MD 21005–5055, tel: (410) 278–5028; fax: (410) 278–5820.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–5776 Filed 3–8–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive Licensing

AGENCY: U.S. Army Research Laboratory, Adelphi, Maryland.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patents for non-exclusive, partially exclusive or exclusive licensing. All of the listed patents have been assigned to the United States of America as represented by the Secretary of the Army, Washington, D.C.

These patents cover a wide variety of technical arts including: Self-Imaging Waveguide Splitters, A Random Number Generator and an Acoustic Monitoring System.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Public Law 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wish to license the U.S. patents listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by these patents.

Title: Self-Imaging Waveguide Optical Polarization Or Wavelength Splitters.
Inventor: David M. Mackie.
Patent Number: 5,838,842.
Issued Date: Nov 17, 1998.

Title: Random Number Generator For Jittered Pulse Repetition Interval Radar Systems.
Inventor: John W. McCorkle.
Patent Number: 5,847,677.
Issued Date: Dec 8, 1998.

Title: Self-Imaging Waveguide Optical Polarization or Wavelength Splitters.
Inventor: David M. Mackie.
Patent Number: 5,852,691.
Issued Date: Dec 22, 1998.

Title: Acoustic Monitoring System.
Inventor: Michael V. Scanlon.
Patent Number: 5,853,005.
Issued Date: Dec 29, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Norma Cammarata, Technology Transfer Office, AMSRL–CS–TT, U.S. Army Research Laboratory, 2800 Powder Mill Road, Adelphi, Maryland 20783–1197, tel: (301) 394–2952; fax: (301) 394–5818.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–5777 Filed 3–8–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent to Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Storm Damage Reduction Project from Great Egg Harbor Inlet to Townsends Inlet, Cape May County, New Jersey

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: The action being taken is an evaluation of the alternatives for storm damage reduction and the control of further erosion for the communities of Ocean City, Strathmere and Sea Isle City, Cape May County, New Jersey. The

purpose of any consequent work would be to provide shore property protection and to stabilize the shoreline at a predetermined width.

FOR FURTHER INFORMATION CONTACT: Questions regarding the DEIS should be addressed to Mr. Steve Allen, (215) 656–6559, U.S. Army Corps of Engineers, CENAP–PL–E, Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107–3390.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

a. The proposed document evaluates a study area located on the southern Atlantic coast of New Jersey in Cape May County, extending approximately 24.1 Kilometers from Great Egg Harbor Inlet to Townsends Inlet. The study area includes the beaches, nearshore areas and offshore areas along the coastline. This area is subject to severe damages due to major storm events.

b. The authority for the proposed project is the resolution adopted by the U.S. House of Representatives Committee on Public Works and Transportation and the U.S. Senate Committee on Environment and Public Works dated December 1987.

2. Alternatives

In addition to the no action alternative, the alternatives considered for storm damage reduction will fall into structural and non-structural categories. The structural measures being evaluated for storm damage reduction include, but will not be limited to beach (berm and dune) restoration/nourishment, bulkheads, seawalls, revetments, offshore breakwaters, groins, beach sills, or combinations thereof. Non-structural measures being considered are development regulations, and land acquisition.

3. Scoping

a. This study is the sixth of six interim feasibility studies addressing long-term storm damage reduction along the New Jersey Coastline. The Great Egg Harbor Inlet to Townsends Inlet study area was identified in the *New Jersey Shore Protection Study, Report of Limited Reconnaissance Study (1990),* as one of the primary areas to be recommended for further study in the feasibility phase.

b. The scoping process is on-going and has involved preliminary coordination with Federal, State, and local agencies. Participation of the general public and other interested parties and organizations were invited by means of a public notice. Based on the input of these agencies and the interested public, a decision to have a formal scoping meeting will be made.

c. The significant issues and concerns that have been identified include the impacts of the project on aquatic biota, fisheries, water quality, intertidal habitat, shallow water habitat, cultural resources, and socio-economics.

4. Availability

It is estimated the DEIS will be made available to the public in FY 2000 but is contingent on fund allocation by Congress.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–5775 Filed 3–8–99; 8:45 am]

BILLING CODE 3710–GR–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the 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 May 10, 1999.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 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 Acting Leader, Information Management Group, Office of the 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: March 3, 1999.

Joseph Schubart,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: New.

Title: Evaluation of the Public Charter Schools Program: Year 1 Data Collection Instruments.

Frequency: Annually.

Affected Public: Federal Government; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 125.

Burden Hours: 94.

Abstract: The evaluation of the Public Charter Schools Program (PCSP) is the first national study of federal support for charter schools. The contractor, SRI International, will gather data on charter school policies and practices at the state, chartering agency, and charter school levels. The study examines the use of PCSP funds at these levels, assesses the impact of flexibility provisions in states' charter school legislation, and assesses the effect of

charter schools on student performance. Respondents include federal PCSP staff, state charter school coordinators, and representatives of chartering agencies and charter schools.

[FR Doc. 99–5729 Filed 3–8–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice Inviting Applicants To Serve as Field Readers for the Child Care Access Means Parents in School Program

SUMMARY: The Office of Higher Education Programs (HEP) invites interested individuals to apply to serve as field readers evaluating grant applications for the Child Care Access Means Parents in School Program. The Child Care Access Means Parents in School Program is intended to increase the access of low-income parents to postsecondary education through the provision of quality, affordable child care.

Duties and Compensation of Field Readers: Field readers will review applications according to the applicable selection criteria. Each field reader will serve for a period of approximately 5 days. Each field reader who is selected will receive compensation for certain travel expenses and an honorarium.

Field Reader Qualifications: The Department is seeking experienced and knowledgeable professionals, who are current with issues regarding the provision of quality child care services and expanding access for low-income parents to attend institutions of higher education. These professionals should be familiar with issues dealing with the start-up and operation of a child care center, early childhood education, development of children between zero to three years of age, outreach to low-income families, and, in particular, child care programs in a college or university setting. Prospective field readers may include child care providers, administrators, and experts; individuals with experience in early childhood education and development of children between zero to three years of age; individuals from State agencies, institutions of higher education, and community services agencies; and individuals with experience helping low-income parents further their education. Each field reader must have the expertise necessary to accurately assess the applicant's showing on each of the applicable selection criteria.

Application Process: Any individual interested in serving as a field reader should mail or fax two copies of his or her resume to the address listed below indicating the program in which they are interested in serving as a field reader. Resumes should not exceed two pages.

FOR FURTHER INFORMATION CONTACT: Cindy Brown, Child Care Access Means Parents in School Program, Post Office Box 23764. Washington, D.C. 20026–3764. Inquiries may be sent by e-mail to *Cindy__*Brown@ed.gov or by Fax to: (202) 708–9046. Individuals who use 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.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audio tape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

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http;//ocfo.ed.gov/fedreg.html

http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader program with search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922.

The documents are located under Option G–Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 1070e.

Dated: March 4, 1999.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc 99–5801 Filed 3–8–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.335]

Child Care Access Means Parents in School Program; Notice of Technical Assistance Workshops for Fiscal Year (FY) 1999 Grant Applications

SUMMARY: The Secretary announces technical assistance workshops to assist institutions of higher education in preparing grant applications for the Child Care Access Means Parents in School Program fiscal year (FY) 1999 grant competition.

DATE AND TIME: The technical assistance workshop in Chicago will be held on Thursday, March 18, 1999, from 9 a.m. to 1 p.m. The technical assistance workshop in San Francisco will be held on Monday, March 22, 1999, from 9 a.m. to 12 p.m. The technical assistance workshop in Washington, DC will be held on Friday, March 26, 1999, from 9 a.m. to 1 p.m.

ADDRESSES: The Chicago workshop will be held at University of Illinois at Chicago, Chicago Circle Center, 750 South Halsted Street, Chicago, Illinois. The San Francisco workshop will be held at San Francisco State University, Guest Center, 1600 Holloway Avenue, San Francisco, California. The Washington, DC workshop will be held in the Auditorium at the General Services (GSA) Building, 7th and D Streets, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Cindy Brown, Child Care Access Means Parents in School Program, 400 Maryland Avenue, SW., Portals Building, Suite 600A, Washington, DC 20202. Inquiries may be sent by e-mail to *Cindy__Brown@ed.gov* or by Fax to: (202) 290–9271. Individuals who use telecommunication 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.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audio tape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The meeting sites are accessible to individuals with disabilities. An individual with a disability who will need an auxiliary aid or services to participate in the meeting (e.g., interpreting services, listening device, or materials in an alternate format), should notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although the Department will attempt to

accommodate requests received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.html

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To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office at (202) 512–1530 or, toll free, at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 1070e.

Dated: March 4, 1999.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 99–5802 Filed 3–8–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation Policy; Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Correction.

SUMMARY: In notice FR document 99–5101 beginning on page 10132 in the issue of Tuesday, March 2, 1999, make the following correction:

On page 10132, in the second column, **SUMMARY** section, second paragraph, the sentence should read, ''This subsequent arrangement concerns the transfer of 5,000,000 grams of natural uranium from Canada to EURATOM for toll enrichment. The enrichment will not exceed 20%.''

Dated: March 3, 1999.

For the Department of Energy.

Edward T. Fei,

Deputy Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 99–5758 Filed 3–8–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Department of Energy, Los Alamos National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos National Laboratory. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, March 24, 1999:

3:00 p.m.–5:00 p.m. (Monitoring and Surveillance Workshop)
6:00 p.m.–9:00 p.m. (Board Meeting)
6:30 p.m. to 7:00 p.m. (Public Comment Session)

ADDRESSES: Elk's Lodge, Old Las Vegas Highway, Santa Fe, New Mexico 87505.

FOR FURTHER INFORMATION CONTACT: Ms. Ann DuBois, Northern New Mexico Citizens' Advisory Board, Los Alamos National Laboratory, 528 35th Street, Los Alamos, New Mexico 87544, (505) 665–5048.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Public comment (6:30–7:00 p.m.).
2. Committee reports.
3. Other Board business will be conducted as necessary.

Public Participation: The meeting is open to the public. The public may file written statements with the Committee, either before or after the meeting. A sign-up sheet will also be available at the door of the meeting room to indicate a request to address the Board. Individuals who wish to make oral presentations, other than during the public comment period, should contact Ms. Ann DuBois at (505) 665–5048 five (5) business days prior to the meeting to request that the Board consider the item for inclusion at this or a future meeting. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Ms. M.J. Byrne, Deputy Designated Federal Officer, Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87185–5400.

Issued at Washington, DC on March 4, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–5774 Filed 3–8–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: Consistent with the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting: Name: Secretary of Energy Advisory Board.

DATES AND TIMES: Wednesday, March 17, 1999, 8:30 AM—2:30 PM.

ADDRESSES: Hilton Washington Embassy Row Hotel, Ambassador Room, 2015 Massachusetts Avenue, NW, Washington D.C.

FOR FURTHER INFORMATION CONTACT: Richard C. Burrow, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–1709 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The Secretary of Energy Advisory Board (The Board) reports directly to the Secretary of Energy and is chartered under the Federal Advisory Committee Act. The Board provides the Secretary of Energy with essential independent advice and recommendations on issues of national importance. The Board and its subcommittees provide timely, balanced, and authoritative advice to the Secretary on the Department's management reforms, research, development, and technology activities,

energy and national security responsibilities, environmental cleanup activities, and economic issues relating to energy.

Tentative Agenda

Wednesday, March 17, 1999

8:30 AM—8:50 AM Welcome & Opening Remarks—SEAB Chairman and Secretary Bill Richardson

8:50 AM—12:00 PM Status Reports & Board Discussion

12:00 PM—1:30 PM Lunch

1:30 PM—2:15 PM Status Reports & Board Discussion

2:15 PM—2:30 PM Public Comment Period

2:30 PM Closing Remarks

This tentative agenda is subject to change. The final agenda will be available at the meeting.

Public Participation: The Chairman of the Secretary of Energy Advisory Board is empowered to conduct the meeting in a way that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Washington D.C., the Board welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Board will make every effort to hear the views of all interested parties. Written comments may be submitted to Skila Harris, Executive Director, Secretary of Energy Advisory Board, AB–1, US Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

Minutes: Minutes and a transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 9:00 AM and 4:00 PM, Monday through Friday except Federal holidays. Information on the Secretary of Energy Advisory Board may also be found at the Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, D.C., on March 4, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–5757 Filed 3–8–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. PP–206]

Application for Presidential Permit Frontera Generation Limited Partnership

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Application.

SUMMARY: Frontera Generation Limited Partnership (Frontera) has applied for a Presidential permit to construct, connect, operate and maintain electric transmission facilities across the U.S. border with Mexico.

DATES: Comments, protests, or requests to intervene must be submitted on or before April 8, 1999.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Coal & Power Import and Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0350.

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

SUPPLEMENTARY INFORMATION: The construction, connection, operation, and maintenance of facilities at the international border of the United States for the transmission of electric energy between the United States and a foreign country is prohibited in the absence of a Presidential permit issued pursuant to Executive Order (EO) 10485, as amended by EO 12038.

On March 3, 1999, Frontera filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) for a Presidential permit. Frontera is an exempt wholesale generator. Frontera, and its general partner, CSW Frontera GP II, are wholly-owned subsidiary of CSW Energy, Inc., a Texas corporation involved in the non-regulated generation and sale of electric power. Frontera is proposing to develop an international electric transmission line project in two phases. Initially, Frontera proposes to construct single, temporary 138,000-volt (138–kV) transmission circuit on wooden poles across the U.S. border with Mexico and place the temporary facilities into service during the summer of 1999. At a later date, Frontera proposes to construct a permanent double-circuit 230–kV transmission line on steel towers along the same right-of-way. The 138–kV line would be removed after the 230–kV transmission circuits are energized. Each of the proposed transmission lines would extend approximately two miles from a 500-megawatt (MW) gas-fired, electric powerplant Frontera is building near Mission, in Higalgo County, Texas. At the border, the transmission lines would interconnect with similar facilities of the Comision Federal de Electricidad (CFE), the national electric utility of Mexico, and continue an additional 5.6 miles south to CFE's Cumbres Substation, located near Reynosa in the Mexican State of Tamaulipas.

In its application, Frontera asserts that the operation of the proposed international transmission facilities would not cause the U.S. and Mexican electrical systems to operate in parallel.

Prior to exporting electric energy to Mexico, Frontera will be required to obtain an electricity export authorization from DOE pursuant to section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

Since the restructuring of the electric power industry began, resulting in the introduction of different types of competitive entities into the marketplace, DOE has consistently expressed its policy that cross-border trade in electric energy should be subject to the same principles of comparable open access and non-discrimination that apply to transmission in interstate commerce. DOE has stated that policy in export authorizations granted to entities requesting authority to export over international transmission facilities. Specifically, DOE expects transmitting utilities owning border facilities to provide access across the border in accordance with the principles of comparable open access and non-discrimination contained in the FPA and articulated in Federal Energy Regulatory Commission Order No. 888 (Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; FERC Stats. & Regs. ¶ 31,036 (1996)), as amended. In furtherance of this policy, DOE intends to condition any Presidential permit issued in this proceeding on compliance with these open access principles.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Filings should be clearly marked with Docket PP–206.

Fifteen copies of each document should be filed with the DOE on or before the date listed above. Additional copies should be filed directly with:

Paul E. Graff, Vice President, CSW Frontera GP II, Inc., 1616 Woodall Rodgers Freeway, Dallas, Texas 75202 AND Carolyn Y. Thompson, Jones, Day, Reavis & Pogue, 1450 G Street, NW, Washington, DC 20005–2088.

Before a Presidential permit may be issued or amended, DOE must determine that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system. In addition, DOE must consider the environmental impacts of the proposed action pursuant to the National Environmental Policy Act of 1969 (NEPA). DOE also must obtain the concurrence of the Secretary of State and the Secretary of Defense before taking final action on a Presidential permit application.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above. In addition, the application may be reviewed or downloaded from the Fossil Energy Home Page at: http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select ''Regulatory Programs,'' then ''Electricity Regulations,'' and then ''Pending Proceedings'' from the options menus.

Issued in Washington, D. C., on March 4, 1999.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Fossil Energy.

[FR Doc. 99–5759 Filed 3–8–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–240–000]

Dynegy Midstream Pipeline, Inc.; Notice of Negotiated Rate Filing

March 3, 1999.

Take notice that on February 26, 1999, Dynegy Midstream Pipeline, Inc. (DMP formerly Warren Transportation, Inc.), pursuant to Section 3.6 of its FTS Rate Schedule, filed a negotiated rate agreement with Kansas Gas Service Company for service under DMP's FTS Rate Schedule. DMP requests an April 1, 1999 effective date for the agreement.

DMP states that the agreement provides for a volumetric rate service to specific delivery points where Kansas Gas Service provides residential service to customers on the DMP system. DMP states that the volumetric rate is the maximum interruptible transportation rate plus applicable surcharges and fuel.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers.

Secretary.

[FR Doc. 99–5710 Filed 3–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–235–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

March 3, 1999.

Take notice that on February 26, 1999, 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 March 1, 1999:

Thirty-Sixth Revised Sheet No. 8
Thirty-Sixth Revised Sheet No. 9
Thirty-Fifth Revised Sheet No. 13
Forty-Second Revised Sheet No. 18

ANR states that the above-referenced tariff sheets are being filed to implement recovery of approximately $2.5 million 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 also advises that the proposed changes would decrease current quarterly Above-Market Dakota Cost recoveries from $2,571,704 to $2,528,326.

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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–5705 Filed 3–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–236–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

March 3, 1999.

Take notice that, on February 26, 1999, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet, proposed to become effective March 1, 1999:

Forty-Third Revised Sheet No. 18

ANR states that the above-referenced tariff sheet is being filed to implement the annual reconciliation of the recovery of its Above-Market Dakota Costs, as required by its tariff recovery mechanism. ANR advises that the filing proposes a reservation surcharge adjustment of $0.017 applicable to its currently effective, firm service Rate Schedules. This surcharge is proposed to recover from ANR's customers, over the twelve month period of March 1, 1999 to February 29, 2000, the $1.0 million of Above-Market Dakota Cost undercollections, inclusive of interest, which are reflected in the filing.

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. This filing may be viewed on the web at http://www.ferce.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–5706 Filed 3–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–3–22–000]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 3, 1999.

Take notice that on March 1, 1999, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Twenty-First Revised Sheet No. 31
Forty-Sixth Revised Sheet No. 32
Eighteenth Revised Sheet No. 34
Twenty-First Revised Sheet No. 35

CNG requests an effective date of April 1, 1999 for these sheets. CNG states that the purpose of this filing is to update both CNG's effective Transportation Cost Rate Adjustment (TCRA) and its Electric Power Cost Adjustment (EPCA). The effect of the proposed TCRA, including the EPCA, on each element of CNG's rates is summarized in workpapers that are attached to the filing.

CNG states that copies of its letter of transmittal and enclosures are being mailed to its 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc 99–5699 Filed 3–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–5–32–000]

Colorado Interstate Gas Company; Notice of Tariff Filing

March 3, 1999.

Take notice that, on February 26, 1999, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Eleventh Revised Sheet No. 11A, reflecting an increase in its Fuel reimbursement percentage for Lost, Unaccounted-For and Other Fuel Gas from 1.17% to 1.32% effective April 1, 1999.

CIG states that copies of this 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–5701 Filed 3–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–2–21–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 3, 1999.

Take notice that on March 1, 1999, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet, with a proposed effective date of April 1, 1999:

Seventh Revised Sheet No. 44

Columbia states that it submits its annual filing pursuant to the provisions of Section 35, ''Retainage Adjustment Mechanism (RAM),'' of the General Terms and Conditions (GTC) of its Tariff. Seventh Revised Sheet No. 44 sets forth the retainage factors applicable to Columbia's transportation, storage, processing and gathering services, as revised by this filing.

In addition, Columbia states that it has included in its transmittal letter the first semi-annual report it agreed to provide as part of its interim proposal concerning MarkWest Hydrocarbon, Inc. and the 650,000 Dth annual quantity pursuant to Columbia Gas Transmission Corp., 84 FERC (61,221 (1998) in Docket No. TM98–2–21.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, affected state commissions and parties on the official service list in Docket No. TM98–2–21.

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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–5696, Filed 3–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–3–21–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 3, 1999.

Take notice that on March 1, 1999, 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 with a proposed effective date of April 1, 1999:

Thirty-fourth Revised Sheet No. 25
Thirty-fourth Revised Sheet No. 26
Thirty-fourth Revised Sheet No. 27
Thirty-second Revised Sheet No. 28
Eighteenth Revised Sheet No. 30
Fourteenth Revised Sheet No. 31

Columbia states that these revised tariff sheets are filed pursuant to Section 45, Electric Power Costs Adjustments (EPCA), of the General Terms and Conditions (GTC) of Columbia's FERC Gas Tariff, Second Revised Volume No. 1. Columbia states that Section 45.2 provides that Columbia may file, to be effective each April 1, to adjust its electric power costs, thereby allowing for the recovery of current EPCA costs and the EPCA surcharge.

Columbia states that these revised tariff sheets are being filed to reflect adjustments to Columbia's current costs for electric power for the twelve-month period beginning April 1, 1999.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–5698 Filed 3–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–242–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 3, 1999.

Take notice that on March 1, 1999, 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 with a proposed effective date of April 1, 1999:

Thirty-fifth Revised Sheet No. 25
Thirty-fifth Revised Sheet No. 26
Thirty-fifth Revised Sheet No. 27
Thirty-fifth Revised Sheet No. 28

Columbia states that this filing comprises Columbia's annual filing pursuant to Section 36.2 of the General Terms and Conditions (GTC) of its Tariff. GTC Section 36, ''Transportation Costs Rate Adjustment (TCRA),'' enables Columbia to adjust its TCRA rates prospectively to reflect estimated current costs and unrecovered amounts for the deferral period. The TCRA rates consist of a current TCRA rate, reflecting an estimate of costs for a prospective 12-month period, and a TCRA surcharge rate, which is a true-up for actual activity within the deferral period. In this filing, the TCRA rate consists of a Current Operational TCRA Rate an Operational TCRA Surcharge to recover the unrecovered amounts for the deferral period pursuant to GTC Section 36.4(a).

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers

Secretary.

[FR Doc. 99–5712 Filed 3–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–246–000]

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

March 3, 1999.

Take notice that on March 1, 1999, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of April 1, 1999:

Twenty-first Revised Sheet No. 18
Eleven Revised Sheet No. 18A
Twenty-second Revised Sheet No. 19

Columbia Gulf states that this filing represents Columbia Gulf's annual filing pursuant to the provisions of Section 33, ''Transportation Retainage Adjustment (TRA),'' of the General Terms and Conditions (''GTC'') of its Tariff.

Columbia Gulf states that the tariff sheets listed above set forth the transportation retainage factors as a result of this filing. GTC Section 33.2 enables Columbia Gulf to state retainage factors for its rate zones, which factors consist of a current and an over/under recovered component. Pursuant to GTC Section 33.4(a), the current component

reflects the estimate of total company-use, lost, and unaccounted-for quantities required during the 12-month period commencing, in an annual filing such as this, on April 1. Pursuant to GTC Section 33.4(b) the over/under recovered component reflects the reconciliation of ''actual'' company-use, lost, and unaccounted-for quantities with quantities actually retained by Columbia Gulf for the preceding calendar year; i.e., the deferral period.

The deferral period for this annual filing is the preceding calendar year being January 1, 1998 through December 31, 1998. Appendix A sets forth Columbia Gulf's actual experience during the deferral period. As reflected therein, Columbia Gulf was in a net under-recovery positions as of December 31, 1998. Consequently, in this filing Columbia Gulf is implementing an under-recovered surcharge component for each of the retainage factors to increase future quantities to be retained.

Columbia Gulf states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–5691 Filed 3–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–238–002]

Destin Pipeline Company, L.L.C.; Notice of Waiver Request

March 3, 1999.

Take notice that on February 26, 1999, Destin Pipeline company, L.L.C. (Destin), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP98–238–002 a request pursuant to Section 157.208(g) of the Commission's Regulations for waiver of the prior notice blanket certificate cost limitations associated with its CNG Lateral Project authorized in Docket No. CP98–238–000, all as more fully set forth in the request that is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Specifically, Destin requests, pursuant to Section 157.208(g) of the Commission's Regulations, that the Director of the Office of Pipeline and Producer Regulation (Director) waive the project cost limitations of Sections 157.208(b) and (d) associated with the construction of its CNG Lateral Project authorized in Docket No. CP98–238–000, 83 FERC ¶ 61,308, (1998). Destin states that the costs for the CNG Lateral Project exceeded the 1998 cost limit of $19.6 million for blanket certificate prior notice projects, and that such waiver request is mandated under the Commission's regulations. Destin states that the costs related to the CNG Lateral Project were originally projected to total $19.0 million, but that, due to a series of unforeseen and unanticipated events, the actual total cost related to the CNG Lateral Project if $35.1 million. Destin also states that if the Director believes that a waiver would not be appropriate, it requests that the Commission convert its blanket certificate authorization for the CNG Lateral Project to a case specific Section 7(c) certificate.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 24, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 99–5703 Filed 3–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–2–131–000]

KO Transmission Company; Notice of Tariff Filing

March 3, 1999.

Take notice that on March 1, 1999, KO Transmission Company (KO Transmission) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet, bearing a proposed effective date of April 1, 1999:

Sixth Revised Sheet No. 10

KO Transmission states that the purpose of the filing is to revise its fuel retainage percentage consistent with Section 24 of the General Terms and Conditions of its Tariff. According to KO Transmission, Columbia Gas Transmission Corporation (Columbia) operates and maintains a portion of KO Transmission facilities pursuant to the Operating Agreement referenced in its Tariff at Original Sheet No. 7. Pursuant to that Operating Agreement, Columbia retains certain volumes associated with gas transported on behalf of KO Transmission. On February 25, 1999, Columbia notified KO Transmission that under terms of the Operating Agreement, KO Transmission will be subject to a 0.57% retainage. Accordingly, KO Transmission states that the instant filing tracks this fuel retainage.

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 § 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–5738 Filed 3–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–2027–000]

Milford Power Limited Partnership; Notice of Filing

March 3, 1999.

Take notice that on March 2, 1999, Milford Power Limited Partnership (Milford), tendered for filing a revised rate schedule and request for certain waivers and authorizations under various regulations of the Federal Energy Regulatory Commission (the Commission), and for an order accepting its proposed rate schedule governing the sale to wholesale purchasers of capacity and energy.

Milford has requested that the Commission establish an effective date of April 1, 1999, for the rate schedule. Milford also has submitted, pursuant to the proposed rate schedule, a long-term power purchase agreement for the sale of capacity and energy from its electric generating plant in Milford, Massachusetts.

A copy of the filing was served upon the Massachusetts Department of Public Utilities.

Any person desiring to be heard or to protest such 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 385.214). All such motions and protests should be filed on or before March 12, 1999. 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. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–5739 Filed 3–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–3–28–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

March 3, 1999.

Take notice that on March 1, 1999, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective April 1, 1999.

Panhandle states that this filing is made in accordance with Section 24 (Fuel Reimbursement Adjustment) of the General Terms and Conditions in Panhandle's FERC Gas Tariff, First Revised Volume No. 1. The revised tariff sheets filed herewith reflect the following changes to Fuel Reimbursement Percentages:

(1) No change in the Gathering Fuel Reimbursement Percentage;

(2) a (0.01%) decrease in the Field Zone Fuel Reimbursement Percentage;

(3) a (0.08%) decrease in the Market Zone Fuel Reimbursement Percentage;

(4) No change in the Injection and in the Withdrawal Field Area Storage Reimbursement Percentages; and

(5) No change in the Injection and in the Withdrawal Market Area Storage Reimbursement Percentages.

Panhandle further states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–5702 Filed 3–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–248–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing

March 3, 1999.

Take notice that on March 1, 1999, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, the following tariff sheets, with an effective date of April 1, 1999:

Third Revised Sheet No. 15
Fourth Revised Sheet No. 16B
Fifth Revised Sheet No. 17
Third Revised Sheet No. 54A
Original Revised Sheet No. 54B
Fourth Revised Sheet No. 81
Second Revised Sheet No. 81.01
Original Revised Sheet No. 81.01a
Fourth Revised Sheet No. 81C
Third Revised Sheet No. 119
Third Revised Sheet No. 120
Third Revised Sheet No. 121

PG&E GT–NW asserts that the purpose of this filing is to clarify certain issues with respect to firm service priorities on PG&E GT–NW's system, particularly with respect to firm backhaul service.

PG&E GT–NW further states that a copy of this filing has been served on PG&E GT–NW's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–5693 Filed 3–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–247–000]

Reliant Energy Gas Transmission Company; Notice of Filing

March 3, 1999.

Take notice that on March 1, 1999, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets to become effective April 1, 1999:

Sixteenth Revised Sheet No. 5
Fifteenth Revised Sheet No. 6

REGT states that the revised tariff sheets are filed in compliance with the Stipulation and Agreement (Settlement) approved by Commission order in Docket No. RP91–149 on March 31, 1992. Arkla Energy Resources, a division of Arkla, Inc. 58 FERC ¶ 61,359 (1992). REGT's March 1, 1999 filing is its seventh annual filing pursuant to the Settlement, and it proposes to continue the currently effective rate for the CSC Charge as provided in the settlement, at $0.03 per MMBtu.

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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–5692 Filed 3–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–238–000]

Sea Robin Pipeline Company; Notice of Proposed Changes to FERC Gas Tariff

March 3, 1999.

Take notice that on February 26, 1999, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective April 1, 1999:

Fourth Revised Sheet No. 2
Fifth Revised Sheet No. 95
Second Revised Sheet No. 106
First Revised Sheet No. 130e
First Revised Sheet No. 130g
First Revised Sheet No. 130l

Sea Robin states that the purpose of this filing is to revise the tariff with respect to the types of rate discounts that may be granted by Sea Robin without having to file a shipper's individual Service Agreement. Such filing is consistent with filings made by other pipelines in response to the Commission's Order in Natural Gas Pipeline Company of America, 82 FERC 61,298 (1998). Sea Robin has requested that these sheets be made effective as of April 1, 1999.

Sea Robin states that copies of the filing will be served upon its shippers and interested state commissions.

Sea Robin has also made a change to its Rate Schedule FTS–2 to limit the frequency of times a shipper can change its MDQ on six months prior notice under Section 3(d). Under the proposed tariff language, shippers cannot make a subsequent prior notice change in MDQ until the previous change becomes effective.

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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–5708 Filed 3–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–222–000]

Shenandoah Gas Company; Notice of Application for Abandonment

March 3, 1999.

Take notice that on February 22, 1999, Shenandoah Gas Company (Shenandoah), P.O. Box 2400, Winchester, Virginia 22604 filed an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations requesting permission to abandon its certificated facilities in West Virginia by sale to Mountaineer Gas Company (Mountaineer), all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Shenandoah states that it is engaged in the distribution of natural gas for residential, commercial, and industrial use in portions of Virginia and West Virginia. Shenandoah's service area in Virginia includes Clarke, Frederick, Shenandoah, and Warren Counties, the City of Winchester and the Towns of Berryville, Middletown, New Market, Stephens City, Strasburg, and Woodstock. Shenandoah's West Virginia service area includes Berkeley County, a portion of Jefferson County abutting Berkeley County and the City of Martinsburg. It is stated that the rates and terms and conditions of service Shenandoah provides to customers in its Virginia service area are regulated by the Virginia State Corporation Commission (Virginia SCC). The West Virginia Public Service Commission (West Virginia PSC) regulates the rates and terms and conditions of service

Shenandoah provides to customers in its West Virginia service area.

Shenandoah states that it receives natural gas in the northern portion of its system through two interconnections with Columbia Gas Transmission Corporation (Columbia) at Columbia's Nineveh and Cedar Creek Gate Stations in Warren County, Virginia. From the Cedar Creek Gate Station, Shenandoah states that it transports gas through its original 6-inch transmission pipeline that extends northeast to the City of Martinsburg, West Virginia.[1] Shenandoah states that under normal operating conditions, gas received from Columbia at the Cedar Creek Gate Station is used to serve markets in communities adjacent to the pipeline in Virginia and in the City of Winchester, Virginia. From the Nineveh Gate Station, located approximately 6.5 miles east of the Cedar Creek Gate Station, Shenandoah states that it transports gas through its 12-inch transmission pipeline which extends north and converges with the original 6-inch transmission pipeline at the Clearbrook Regulator Station in Frederick County, Virginia.[2] At the Clearbrook Regulator Station, under normal operating conditions, gas from the 12-inch transmission pipeline enters into the original 6-inch transmission pipeline and flows south to reinforce deliveries to Shenandoah's markets in Virginia and north to serve Shenandoah's markets in West Virginia. Shenandoah states that, if necessary, gas received from Columbia at the Cedar Creek Gate Station can flow north into West Virginia.

Shenandoah operates various facilities under Section 7(c) of the NGA and also received a service area determination under Section 7(f) of the NGA, 16 FERC ¶ 61,087 (1981). It is stated that this service area includes Clarke, Frederick, Shenandoah, and Warren Counties (excluding certain areas in Shenandoah County) and the City of Winchester and other communities in Virginia. In West Virginia, the service area includes Berkeley County, a portion of Jefferson County abutting Berkeley County and the City of Martinsburg. Shenandoah also received a blanket transportation certificate under Part 284 of the Commission's regulations to conduct activities to the same extent as intrastate pipelines under Section 311 of the Natural Gas Policy Act of 1978, 44 FERC ¶ 61,108 (1988). Shenandoah states that it will provide firm interstate transportation service on behalf of Mountaineer under its blanket certificate.

Pursuant to a November 22, 1998 Asset Purchase and Sale Agreement (Agreement), Shenandoah will sell to Mountaineer all of its natural gas transmission and distribution facilities located in West Virginia, including facilities that were previously certificated under NGA section 7(c). Shenandoah states that Mountaineer is a local distribution company providing public utility gas service in West Virginia, subject to regulation by the West Virginia PSC. Shenandoah further states that Mountaineer will dedicate the transferred facilities to providing retail service to Shenandoah's former West Virginia customers.

Currently, the only source of gas supply to serve customers in Shenandoah's service territory in West Virginia is through Shenandoah's interconnections with Columbia in Warren County, Virginia. Shenandoah states that under the terms of the Agreement it will provide a firm interstate transportation service on behalf of Mountaineer, receiving gas in Virginia and redelivering up to 16,000 dekatherms per day to Mountaineer at the West Virginia border. It is stated that the Agreement also provides for Shenandoah to assign to Mountaineer, subject to consent of Columbia and Columbia Gulf Transmission Company, upstream Rate Schedule FTS, FSS, and SST entitlements used to serve Shenandoah's West Virginia customers.

It is stated that, under the terms applicable to the Part 284 transportation service Shenandoah intends to provide, Mountaineer may arrange for the transportation of its own gas supplies, act as agent for any of its customers desiring such service, or release capacity to existing transportation customers in West Virginia, as requested by such customers, or any others on an as available basis. Shenandoah states that it will provide the firm transportation service for an initial term of five years. It further states that the service may be canceled thereafter by either party after two years notice given after the expiration of the initial term.

After abandonment of its certificated facilities in West Virginia, Shenandoah will retain transmission facilities located in Virginia which will be dedicated, in part, to providing firm interstate transmission service to Mountaineer and its customers, as requested by such customers.

After the sale of Shenandoah's West Virginia utility assets to Mountaineer, Shenandoah's service area will be reduced, as it will no longer provide retail service in West Virginia. However, Shenandoah states that it will continue to provide local distribution service to its customers in Virginia. Shenandoah will also provide a firm interstate transportation service to Mountaineer, subject to the Commission's regulation, delivering gas supplies on behalf of Mountaineer at the West Virginia border. Shenandoah states that any further expansion or modification of its facilities related to providing firm interstate transmission service for deliveries into West Virginia would be subject to NGA section 7 requirements. Shenandoah states that if the Commission determines it to be appropriate, Shenandoah will retain its current service area determination under Section 7(f) of the NGA.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 24, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held with further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, or if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

[1] Shenandoah states that it will retain the portion of this pipeline that is in Virginia.

[2] Shenandoah states that this pipeline is located entirely in Virginia and will be retained by Shenandoah.

unnecessary for Shenandoah to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–5704 Filed 3–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–237–000]

South Georgia Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

March 3, 1999.

Take notice that on February 26, 1999, 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 to become effective April 1, 1999:

Third Revised Sheet No. 2
Original Sheet No. 98b

South Georgia states that the purpose of this filing is to revise the tariff with respect to the generic types of rate discounts that may be granted by South Georgia without having to file an individual Service Agreement. South Georgia has requested that these sheets be made effective as of April 1, 1999.

South Georgia states that copies of the filing will be served upon its shippers 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–5707 Filed 3–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–239–000]

Southern Natural Gas Company; Notice of Cost Recovery Filing

March 3, 1999.

Take notice that on February 26, 1999, 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 April 1, 1999:

Forty-Fifth Revised Sheet No. 14
Thirty-First Revised Sheet No. 14a
Sixty-Sixth Revised Sheet No. 15
Thirty-Seventh Revised Sheet No. 15a
Forty-Fifth Revised Sheet No. 16
Thirty-First Revised Sheet No. 16a
Sixty-Sixth Revised Sheet No. 17
Thirty-Seventh 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 November 1, 1998 through January 31, 1999. 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, 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–5709 Filed 3–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–241–000]

Southern Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

March 3, 1999.

Take notice that on February 26, 1999, 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 April 1, 1999:

Seventh Revised Sheet No. 2 Original Sheet No. 212j

Southern states that the purpose of this filing is to revise the tariff with respect to the generic types of rate discounts that may be granted by Southern without having to file an individual Service Agreement.

Southern states that copies of the filing will be served upon its shippers and interested state commission.

Any person desiring to be heard or to protest such 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 and protests must 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–5711 Filed 3–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP99–244–000 and TM99–1–106–000]

Southwest Gas Storage Company; Notice of Proposed Changes in FERC Gas Tariff

March 3, 1999.

Take notice that on March 1, 1999, Southwest Gas Storage Company (Southwest) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed on Appendix A attached to the filing, proposed to be effective April 1, 1999.

Southwest states that the purpose of this filing, made in accordance with Section 154.204 of the Commission's Regulations, is to establish a tariff provision to adjust for changes in fuel use for Rate Schedules FSS and ISS. In addition, Southwest is proposing revised fuel reimbursement percentages, calculated in accordance with proposed Section 6.14, Fuel Reimbursement Adjustment, of Rate Schedules FSS and ISS. The Fuel Reimbursement Adjustment reflects the following changes to the Fuel Reimbursement Percentages: (1) West Area Storage Facilities Injection 1.28% and Withdrawal 0.51%: and (2) East Area Storage Facilities Injection 2.19% and Withdrawal 0.99%.

Southwest states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–5689 Filed 3–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–228–000]

Tennessee Gas Pipeline Company; Notice of Application

March 3, 1999.

Take notice that on February 26, 1999, Tennessee Gas Pipeline Company (Applicant), P.O. Box 2511, Houston, Texas, 77252, filed in Docket No. CP99–228–000 an abbreviated application pursuant to Section 7(b) of the Natural Gas Act, as amended, and Sections 157.7 and 157.18 of the Federal Energy Regulatory Commission's (Commission) regulations thereunder, for permission and approval to abandon certain minor pipeline facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance)

Applicant proposes to abandon by removal certain inactive and minor pipeline facilities, specifically, a receipt point facility designated as side valve number 547E–111. Applicant states that this facility is located in Lowndes County, Mississippi. Applicant proposes to blind flange the side valve and remove the riser and associated check and ball valves. Applicant further states that the abandoned facilities will then be scrapped.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 24, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the proetestants parties to the proceeding.

Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provide for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–5714 Filed 3–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–243–000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 3, 1999.

Take notice that on March 1, 1999, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets with a proposed effective date of April 1, 1999:

Sixth Revised Sheet No. 149
Sixth Revised Sheet No. 150
Sixth Revised Sheet Nos. 151–155

Texas Eastern states that the filing is submitted pursuant to Section 15.2(G), Transition Cost Tracker, of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised volume No. 1, and as a limited application pursuant to Section 4 of the Natural Gas Act, 15 U.S.C. Section 717c (1988), and the Rules and Regulations of the Commission promulgated thereunder.

Texas Eastern states that the purpose of the filing is to continue its recovery of Order No. 636 transition costs incurred by upstream pipelines and

flowed through to Texas Eastern as approved by the Commission by order dated March 23, 1998 in Docket No. RP98–142, Texas Eastern's last filing to recover upstream transition cost. Texas Eastern states that this filing covers approximately $0.5 million of upstream transiton costs for the period January 1, 1998 through December 31, 1998, which is a reduction of approximately 60% from the last filing.

Texas Eastern states that copies of the filing were mailed to all affected 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 Section 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–5713 Filed 3–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–250–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 3, 1999.

Take notice that on March 1, 1999 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as 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. The tariff sheets are proposed to be effective April 1, 1999.

Transco states that the instant filing is submitted pursuant to Section 41 of the General Terms and Conditions of Transco's FERC Gas Tariff which provides that Transco will file to reflect net changes in the Transmission Electric Power (TEP) rates 30 days prior to each TEP Annual Period beginning April 1. Attached in Appendix B to the filing are workpapers supporting the derivation of the revised TEP rates reflected on the tariff sheets included therein.

The TEP rates are designed to recover Transco's transmission electric power costs for its electric compressor stations (Stations 100, 115, 120, 125, 145 and 205). The costs underlying the revised TEP rates consist of two components—the Estimated TEP Costs for the period April 1, 1999 through March 31, 2000 plus the balance in the TEP Deferred Account including accumulated interest as of January 31, 1999. Appendix C contains schedules detailing the Estimated TEP Costs for the period April 1, 1999 through March 31, 2000 and Appendix D contains workpapers supporting the calculation of the TEP Deferred Account.

Transco states that it is serving copies of the instant filing to its affected customers, State Commissions and other interested parties.

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 of 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–5695 Filed 3–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–245–000]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

March 3, 1999.

Take notice that on March 1, 1999, Transwestern Pipeline Company (Transwestern), tendered for filing to become part of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1 the following tariff sheets, with an effective date of April 1, 1999:

Ninth Revised Sheet No. 5B.02
Sixth Revised Sheet No. 5B.03
Fourth Revised Sheet No. 91B

Transwestern states the purpose of this filing is to notify the Commission and submit the appropriate tariff sheet changes to reflect the assignment of 25,000 MMBtu/D of firm capacity under two firm transpiration agreements under Transwestern's Rate Schedule FTS–1 by Pacific Gas & Electric Co. (UEG) to El Paso Energy Marketing Company.

Transwestern states that copies of the filing were served upon Transwestern'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, N.W., 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–5690 Filed 3–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–4–30–000]

Trunkline Gas Company; Notice of Proposed Changes in FERC Gas Tariff

March 3, 1999.

Take notice that on March 1, 1999, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in Appendix A attached to the filing, to become effective April 1, 1999.

Trunkline states that this filing is being made in accordance with Section 22 (Fuel Reimbursement Adjustment) of Trunkline's FERC Gas Tariff, First Revised Volume No. 1. The revised tariff sheets listed on Appendix A reflect: a (0.32)% decrease (Field Zone to Zone 2), a (0.38)% decrease (Zone 1A to Zone 2), a (0.14)% decrease (Zone 1B to Zone 2), a 0.04% increase (Zone 2 only), a (0.35)% decrease (Field Zone to Zone 1B), a (0.41)% decrease (Zone 1A to Zone 1B), a (0.17)% decrease (Zone 1B only), a (0.17)% decrease (Field Zone to Zone 1A), a (0.23)% decrease (Zone 1A only) and a 0.07% increase (Field Zone only) to the currently effective fuel reimbursement percentages.

Trunkline states that copies of this filing are being served on all affected shippers 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary

[FR Doc. 99–5700 Filed 3–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–2–82–000]

Viking Gas Transmission Company; Notice of Tariff Filing

March 3, 1999.

Take notice that on February 26, 1999, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 the following tariff sheets to become effective April 1, 1999:

Fourteenth Revised Sheet No. 6
Eighth Revised Sheet No. 6A

Viking states that the purpose of this filing is to make Viking's annual adjustment to its Fuel and Loss Retention Percentages in accordance with Section 154.403 of the Commission's Rules and Regulations, 18 C.F.R. § 154.403 (1998) and Section 26 of the General Terms and Conditions of Viking's FERC Gas Tariff. Application of Section 26 of Viking's tariff results in the following new Fuel and Loss Retention Percentages for Rate Schedules FT–A, FT–B, FT–C, IT and AOT respectively: 2.6 percent for Zone 1–1, 3.19 percent for Zone 1–2, and .72 percent for Zone 2–2.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or 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 should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–5697 Filed 3–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–249–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

March 3, 1999.

Take notice that on March 1, 1999, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, certain revised tariff sheets, with an effective date of March 1, 1999.

Williston Basin states that the revised tariff sheets are being filed pursuant to the Service Agreement applicable to Rate Schedule X–13 service between Williston Basin and Northern States Power Company. The rate for firm transportation hereunder has been restated to reflect the third biennial restatement under the terms of the Service Agreement. The restated rate reflects a reservation charge of $17.04919 per Mcf per month, excluding applicable surcharges. Williston request the Commission to grant a waiver to permit the tariff sheet to be effective March 1, 1999.

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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–5694 Filed 3–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

March 3, 1999.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: March 10, 1999, 10:00 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda—*Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers, Secretary, telephone (202) 208–0400 for a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

Consent Agenda—Hydro, 715th Meeting—March 10, 1999, Regular Meeting (10:00 a.m.)

CAH–1.
DOCKET# P–2525, 019 WISCONSIN PUBLIC SERVICE CORPORATION
OTHER#S P–2522, 032 WISCONSIN PUBLIC SERVICE CORPORATION
OTHER#S P–2546, 035 WISCONSIN PUBLIC SERVICE CORPORATION
OTHER#S P–2560, 012 WISCONSIN PUBLIC SERVICE CORPORATION
OTHER#S P–2581, 014 WISCONSIN PUBLIC SERVICE CORPORATION
OTHER#S P–2595, 024 WISCONSIN PUBLIC SERVICE CORPORATION
CAH–2. OMITTED
CAH–3. OMITTED
CAH–4. DOCKET# P–2459, 076 WEST PENN POWER COMPANY
CAH–5. DOCKET# P–3131, 032 SR HYDROPOWER, INC. AND SR HYROPOWER OF BROCKWAY MILLS, INC.

Consent Agenda—Electric

CAE–1.
DOCKET# ER99–1256, 000 AEP OPERATING COMPANIES
OTHER#S EL98–52, 000 NORTH AMERICAN ELECTRIC RELIABILITY COUNCIL
OTHER#S ER99–1160, 000 WISCONSIN ELECTRIC POWER COMPANY
OTHER#S ER99–1245, 000 APS OPERATING COMPANIES
OTHER#S ER99–1256, 000 AEP OPERATING COMPANIES
OTHER#S ER99–1268, 000 CENTRAL ILLINOIS LIGHT COMPANY
OTHER#S ER99–1286, 000 DAYTON POWER & LIGHT COMPANY
OTHER#S ER99–1287, 000 AMEREN SERVICES COMPANIES
OTHER#S ER99–1288, 000 NEW CENTURY OPERATING COMPANIES
OTHER#S ER99–1290, 000 DUQUESNE LIGHT COMPANY
OTHER#S ER99–1291, 000 SOUTH CAROLINA ELECTRIC & GAS COMPANY
OTHER#S ER99–1294, 000 UTILICORP UNITED INCORPORATED
OTHER#S ER99–1296, 000 TAMPA ELECTRIC COMPANY
OTHER#S ER99–1297, 000 COMMONWEALTH EDISON COMPANY
OTHER#S ER99–1298, 000 DUKE OPERATING COMPANIES
OTHER#S ER99–1299, 000 ENTERGY OPERATING COMPANIES
OTHER#S ER99–1301, 000 MAINE PUBLIC SERVICE COMPANY
OTHER#S ER99–1302, 000 SOUTHERN OPERATING COMPANIES
OTHER#S ER99–1307, 000 LG&E OPERATING COMPANIES
OTHER#S ER99–1309, 000 CAROLINA POWER & LIGHT COMPANY
OTHER#S ER99–1310, 000 OKLAHOMA GAS & ELECTRIC COMPANY
OTHER#S ER99–1312, 000 EMPIRE DISTRICT ELECTRIC COMPANY
OTHER#S ER99–1315, 000 MADISON GAS & ELECTRIC COMPANY
CAE–1
ER99–1317, 000 WESTERN RESOURCES, INC.
ER99–1318, 000 FIRSTENERGY OPERATING COMPANIES
ER99–1319, 000 WPS RESOURCES CORPORATION
ER99–1320, 000 VIRGINIA ELECTRIC AND POWER COMPANY
ER99–1321, 000 FLORIDA POWER CORPORATION
ER99–1322, 000 CINERGY OPERATING COMPANIES
ER99–1323, 000 SOUTHWEST POWER POOL
ER99–1324, 000 ELECTRIC ENERGY INCORPORATED
ER99–1325, 000 NORTHERN INDIANA PUBLIC SERVICE COMPANY
ER99–1326, 000 WOLVERINE POWER SUPPLY COOPERATIVE, INC.
ER99–1327, 000 EAST TEXAS ELECTRIC COOPERATIVE, INC.
ER99–1329, 000 BANGOR HYDRO-ELECTRIC COMPANY
ER99–1330, 000 FLORIDA POWER & LIGHT COMPANY
ER99–1333, 000 MIDWEST ISO, INC.
ER99–1335, 000 CLECO CORPORATION
ER99–1336, 000 CENTRAL VERMONT PUBLIC SERVICE CORPORATION
ER99–1337, 000 BOSTON EDISON COMPANY
ER99–1338, 000 EASTERN UTILITIES ASSOCIATES
ER99–1339, 000 VERMONT ELECTRIC POWER COMPANY, INC.
ER99–1340, 000 CSW OPERATING COMPANIES
ER99–1346, 000 PJM INTERCONNECTION, L.L.C.
ER99–1347, 000 CONSUMERS ENERGY COMPANY AND THE DETROIT EDISON COMPANY
ER99–1348, 000 CONSUMERS ENERGY COMPANY
ER99–1349, 000 THE DETROIT EDISON COMPANY
ER99–1359, 000 KANSAS CITY POWER & LIGHT COMPANY
ER99–1360, 000 OHIO VALLEY ELECTRIC CORPORATION
ER99–1365, 000 NEW YORK POWER POOL
ER99–1373, 000 ILLINOIS POWER COMPANY
ER99–1413, 000 CENTRAL MAINE POWER COMPANY
ER99–1414, 000 NEW ENGLAND POWER POOL AND ISO NEW ENGLAND INC.
ER99–1459, 000 NORTHEAST UTILITIES SERVICE COMPANY
ER99–1690, 000 MAINE ELECTRIC POWER COMPANY
CAE–2.
DOCKET # ER99–1269, 000 WISCONSIN PUBLIC SERVICE CORPORATION
CAE–3.
DOCKET # ER99–1375, 000 SOUTHWEST POWER POOL, INC.
OTHER #S ER99–783, 000 SOUTHWEST POWER POOL, INC.
CAE–4.
DOCKET # ER99–1696, 000 SELECT ENERGY, INC.

CAE–5.

DOCKET # ER99–1248, 000 HARBOR COGENERATION COMPANY
CAE–6. OMITTED
CAE–7. OMITTED
CAE–8.

DOCKET # ER99–963, 000 NEVADA SUN-PEAK LIMITED PARTNERSHIP
CAE–9.
DOCKET # ER99–1378, 000 ALLIANT SERVICES COMPANY
CAE–10.
DOCKET # ER99–1450, 000 MISSOURI-KANSAS POWER POOL
OTHER #S ER97–1083, 000 MOKAN POWER POOL
CAE–10.
OA97–262, 000 MOKAN POWER POOL
OA97–682, 000 MOKAN POWER POOL
CAE–11.
DOCKET # ER99–1228, 000 STORM LAKE POWER PARTNERS II LLC
CAE–12.
DOCKET # ER99–1331, 000 ILLINOIS POWER COMPANY
CAE–13.
DOCKET # ER99–1293, 000 MONMOUTH ENERGY, INC.
CAE–14.
DOCKET # ER99–1261, 000 ENERGY EAST SOUTH GLENS FALLS, LLC
CAE–15.
DOCKET # ER99–1465, 000 ELWOOD MARKETING, LLC
CAE–16.
DOCKET # ER99–1522, 000 BANGOR HYDRO-ELECTRIC COMPANY
CAE–17.
DOCKET # NJ97–3 005 UNITED STATES DEPARTMENT OF ENERGY—BONNEVILLE POWER ADMINISTRATION
CAE–18.
DOCKET # ER97–3729, 000 ATLANTIC CITY ELECTRIC COMPANY, BALTIMORE GAS AND ELECTRIC COMPANY AND DELMARVA POWER & LIGHT COMPANY, ET AL.
CAE–19.
DOCKET # ER98–3527, 000 PJM INTERCONNECTION, L.L.C.
CAE–20. OMITTED
CAE–21.
DOCKET # ER99–1764, 000 ERIE BOULEVARD HYDROPOWER, L.P.
CAE–22.
DOCKET # ER99–1142, 000 NEW ENGLAND POWER POOL
CAE–23.
DOCKET # ER97–2364, 000 SAN DIEGO GAS & ELECTRIC COMPANY
OTHER #S ER97–4235, 000 SAN DIEGO GAS & ELECTRIC COMPANY
ER98–497, 000 SAN DIEGO GAS & ELECTRIC COMPANY
ER98–1682, 000 SAN DIEGO GAS & ELECTRIC COMPANY
ER98–2375, 000 SAN DIEGO GAS & ELECTRIC COMPANY
CAE–24.
DOCKET # EC99–23, 000 BANGOR HYDRO-ELECTRIC COMPANY
OTHER #S ER99–1166, 000 BANGOR HYDRO-ELECTRIC COMPANY
CAE–25.
DOCKET # ER96–2495 001 AEP POWER MARKETING, INC.
CAE–26. OMITTED
CAE–27. OMITTED
CAE–28.
DOCKET # EL94–5 001 SAN DIEGO GAS & ELECTRIC COMPANY V. PUBLIC SERVICE COMPANY OF NEW MEXICO
OTHER #S EL96–40 001 SAN DIEGO GAS & ELECTRIC COMPANY V. PUBLIC SERVICE COMPANY OF NEW MEXICO
CAE–28.
EL97–54, 001 SAN DIEGO GAS & ELECTRIC COMPANY V. PUBLIC SERVICE COMPANY OF NEW MEXICO
CAE–29.
DOCKET # EL99–28, 000 CENTRAL MAINE POWER COMPANY V. FPL ENERGY MAINE, INC.
CAE–30.
DOCKET # EL99–32, 000 FLORIDA POWER & LIGHT COMPANY
CAE–31.
DOCKET # ER85–477, 010 SOUTHWESTERN PUBLIC SERVICE COMPANY
OTHER #S EL95–24, 000 GOLDEN SPREAD ELECTRIC COOPERATIVE, INC. V. SOUTHWESTERN PUBLIC SERVICE COMPANY
EL96–71, 000 GOLDEN SPREAD ELECTRIC COOPERATIVE, INC. V. SOUTHWESTERN PUBLIC SERVICE COMPANY
ER95–1129, 001 SOUTHWESTERN PUBLIC SERVICE COMPANY
ER95–1129, 002 SOUTHWESTERN PUBLIC SERVICE COMPANY
ER95–1138, 000 SOUTHWESTERN PUBLIC SERVICE COMPANY
ER98–3356, 000 SOUTHWESTERN PUBLIC SERVICE COMPANY
ER98–4445, 000 SOUTHWESTERN PUBLIC SERVICE COMPANY
OA96–33, 000 SOUTHWESTERN PUBLIC SERVICE COMPANY
OA97–691, 000 SOUTHWESTERN PUBLIC SERVICE COMPANY
CAE–32.
DOCKET # EL99–21, 000 SAN DIEGO GAS & ELECTRIC COMPANY V. PUBLIC SERVICE COMPANY OF NEW MEXICO
OTHER #S EL97–54, 000 SAN DIEGO GAS & ELECTRIC COMPANY V. PUBLIC SERVICE COMPANY OF NEW MEXICO
CAE–33.
DOCKET # EL99–15, 000 SITHE NEW ENGLAND HOLDINGS, LLC AND SITHE NEW BOSTON, LLC V. NEW ENGLAND POWER POOL AND ISO NEW ENGLAND, INC.
OTHER #S ER99–913, 000 SITHE NEW ENGLAND HOLDINGS, LLC AND SITHE NEW BOSTON, LLC V. NEW ENGLAND POWER POOL AND ISO NEW ENGLAND, INC.
CAE–34.
DOCKET # EL99–16, 000 ALFALFA ELECTRIC COOPERATIVE, INC.
CAE–35. OMITTED
CAE–36.
DOCKET # OA97–520, 002 CITIZENS UTILITIES COMPANY (VERMONT ELECTRIC DIVISION)
OTHER #S OA97–610, 002 CITIZENS UTILITIES COMPANY (VERMONT ELECTRIC DIVISION)

CONSENT AGENDA—GAS AND OIL

CAG–1.
DOCKET # RP99–222 000 COLUMBIA GULF TRANSMISSION COMPANY
OTHER #S RP99–222, 001 COLUMBIA GULF TRANSMISSION COMPANY
CAG–2.
DOCKET # RP99–223, 000 COLUMBIA GAS TRANSMISSION CORPORATION
CAG–3. OMITTED
CAG–4.
DOCKET # RP99–224, 000 MID LOUISIANA GAS COMPANY
CAG–5.
DOCKET # RP99–225, 000 MID LOUISIANA GAS COMPANY
CAG–6.
DOCKET # RP99–180, 001 NATIONAL FUEL GAS SUPPLY CORPORATION
CAG–7.
DOCKET # RP99–173, 000 NORTHERN NATURAL GAS COMPANY
CAG–8.
DOCKET # PR99–1, 000 TRANSOK, L.L.C.
CAG–9.
DOCKET # PR99–2, 000 TRANSOK, L.L.C.
CAG–10.
DOCKET # RP98–188, 003 TENNESSEE GAS PIPELINE COMPANY
CAG–11.
DOCKET # RP99–91, 001 ALGONQUIN LNG, INC.
CAG–12.
DOCKET # RP99–106, 001 TRANSCOLORADO GAS TRANSMISSION COMPANY
CAG–13.
DOCKET # RP97–126, 008 IROQUOIS GAS TRANSMISSION SYSTEM, L.P.
CAG–14. OMITTED
CAG–15.

DOCKET # RP93–109, 014 WILLIAMS NATURAL GAS COMPANY
CAG–16. OMITTED
CAG–17. OMITTED
CAG–18.
DOCKET # RP98–54, 000 COLORADO INTERSTATE GAS COMPANY
CAG–19.
DOCKET # MG98–15, 001 MARITIMES AND NORTHEAST PIPELINE, L.L.C.
OTHER #S MG99–9, 000 MARITIMES AND NORTHEAST PIPELINE, L.L.C.
CAG–20.
DOCKET # MG99–7, 000 ALGONQUIN GAS TRANSMISSION COMPANY
OTHER #S MG99–6, 000 ALGONQUIN LNG, INC.
MG99–8, 000 TEXAS EASTERN TRANSMISSION CORPORATION
CAG–21.
DOCKET # CP99–28, 000 TENNESSEE GAS PIPELINE COMPANY
CAG–22.
DOCKET # CP98–802, 000 ANR PIPELINE COMPANY
CAG–23.
DOCKET # CP99–19, 000 TENNESSEE GAS PIPELINE COMPANY
CAG–24.
DOCKET # CP99–22, 000 GASDEL PIPELINE SYSTEM, INC.
CAG–25.
DOCKET # CP99–38, 000 TEXAS EASTERN TRANSMISSION CORPORATION
CAG–26.
DOCKET # CP96–270, 000 MID CONTINENT MARKET CENTER, INC. V. PANHANDLE EASTERN PIPE LINE COMPANY
OTHER #S CP96–270, 001 MID CONTINENT MARKET CENTER, INC. V. PANHANDLE EASTERN PIPE LINE COMPANY
CP96–529, 000 K N INTERSTATE GAS TRANSMISSION COMPANY
CP96–542, 000 PANHANDLE EASTERN PIPE LINE COMPANY
CAG–27.
DOCKET # CP92–741, 001 WILLISTON BASIN INTERSTATE PIPELINE COMPANY

HYDRO AGENDA

H–1. RESERVED

ELECTRIC AGENDA

E–1. RESERVED

OIL AND GAS AGENDA

I. PIPELINE RATE MATTERS
PR–1. RESERVED
II. PIPELINE CERTIFICATE MATTERS
PC–1.
DOCKET # CP97–315, 000 INDEPENDENCE PIPELINE COMPANY
OTHER #S CP97–315, 001 INDEPENDENCE PIPELINE COMPANY
CP97–319, 000 ANR PIPELINE COMPANY
CP97–320, 000 INDEPENDENCE PIPELINE COMPANY
CP97–321, 000 INDEPENDENCE PIPELINE COMPANY
CP98–150, 000 MILLENNIUM PIPELINE COMPANY, L.P.
CP98–151, 000 COLUMBIA GAS TRANSMISSION CORPORATION
CP98–154, 000 MILLENNIUM PIPELINE COMPANY, L.P.
CP98–155, 000 MILLENNIUM PIPELINE COMPANY, L.P.
CP98–156, 000 MILLENNIUM PIPELINE COMPANY, L.P.
CP98–200, 000 NATIONAL FUEL GAS SUPPLY CORPORATION
CP98–540, 000 TRANSCONTINENTAL GAS PIPE LINE CORPORATION

For Discussion Only.

David P. Boergers,

Secretary.

[FR Doc. 99–5863 Filed 3–5–99; 12:03 pm]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

March 1, 1999.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0885.
Expiration Date: 08/31/1999.
Title: Telephone Number Portability, CC Docket No. 95–116, Third Report and Order (Local Number Portability Worksheet and Recordkeeping Requirement).
Form No.: FCC Form 487.
Respondents: Business or other for profit.
Estimated Annual Burden: 4,400 respondents; 1.74 hours per response (avg.); 7,675 total annual burden hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $2,257,000.
Frequency of Response: On occasion; annually.
Description: In the Third Report and Order issued in CC Docket No. 95–116, the Commission implements, for long-term number portability costs, the statutory requirement that all telecommunications carriers bear the costs of number portability on a competitively neutral basis, as set forth in Section 251(e)(2) of the Telecommunications Act of 1996. The Third Report and Order requires telecommunications carriers to provide the information about their international and regional end-user telecommunications revenues that will enable the regional database administrator to allocate the costs of the number portability regional databases in a competitively neutral manner. See 47 CFR Sections 52.32 and 52.33 FCC Form 487, LNP Worksheet is designed to capture this information. FCC Form 487 will be distributed by Lockheed Martin IMS. Forms are to be filed by April 16, 1999. Call 877–245–5277 if you are required to file FCC Form 487 and need a copy of the form or additional information. (No. of respondents: 3000; hour per response: .50 per respondent contracting out for the preparation of the form and 5 hours for other respondents; total annual burden: 4875 hours). The Third Report and Order requires incumbent local exchange carriers (LECs) to maintain records that detail both the nature and specific amount of these carrier-specific costs that are directly related to number portability, and those carrier-specific costs that are not directly related to number portability. (No. of respondents: 1400; hours per response: 2 hours; total annual burden: 2800 hours). Lockheed Martin IMS will be collecting the information on all telecommunications carriers' regional and international end-user telecommunications revenues to determine each carrier's contribution to the cost of the regional number portability databases. As the administrator, Lockheed Martin must collect sufficient revenues to fund the initial building and ongoing operations of the regional databases.
Obligation to respond: Mandatory.

Public reporting burden for the collections of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to

Performance Evaluation and Records Management, Washington, DC. 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–5773 Filed 3–8–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission For OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Collection of Information

Title: Exemption of State-Owned Properties Under Self-Insurance Plan.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 3067–0127.

Abstract: The application for exemption is made to the Federal Insurance Administrator by the Governor or other duly authorized official of the State. The application is accompanied by sufficient supporting documentation that certifies that the plan of self-insurance, upon which the application for exemption is based, meets or exceeds the standards set forth in FEMA regulation 44 CFR section 75.11. Upon determining that the State's plan of self-insurance equals or exceeds the standards, the Administrator then certifies that the State is exempt from the requirements for the purchase of flood insurance for State-owned structures and their comments.

Affected Public: State Local or Tribal Government.

Number of Respondents: 20.

Estimated Time per Respondent: 5 hours.

Estimated Total Annual Burden Hours: 100.

Frequency of Response: One time.

COMMENTS: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524 or email muriel.anderson@fema.gov.

Dated: February 26, 1999.

Thomas F. Behm,

Acting Director, Program Services Division, Operations Support Directorate.

[FR Doc. 99–5611 Filed 3–8–99; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Application for Participation in the National Flood Insurance Program.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 3067–0020.

Form: FEMA Form: 81–64, Application for Participation in the National Flood Insurance Program.

Abstract: NFIP provides flood insurance to communities that apply for participation and make a commitment to adopt and enforce land use control measures that are designed to protect development from future flood damages. The application form will enable FEMA to continue to rapidly process new community applications and to more quickly provide flood insurance protection to the residents in the communities.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 100 communities.

Estimated Time per Respondent: 4 hours per community.

Estimated Total Annual Burden Hours: 400.

Frequency of Response: On occasion.

COMMENTS: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524 or email muriel.anderson@fema.gov.

Dated: February 26, 1999.

Thomas F. Behm,

Acting Director, Program Services Division, Operations Support Directorate.

[FR Doc. 99–5612 Filed 3–8–99; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Collection of Information

Title: Effectiveness of a Community's Implementation of the NFIP, Community Assistance Contact Report and Community Assistance Visit Report.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 3067–0198.

Abstract: Communities in the National Flood Insurance Program(NFIP) provide the States and FEMA information on their implementation of the NFIP. The two tools used to obtain information are the Community Assistance Contact (CAC), FEMA Form 81–69, and Community Assistance Visits (CAV), FEMA Form 81–69. The CAC form is used during telephone contacts or brief visits with an NFIP community to determine if program-related problems exist and to

offer assistance. The CAV form is used during scheduled visits to NFIP communities for the purpose of conducting a comprehensive assessment of the community's floodplain management program and to assist the community in understanding NFIP requirements and implementing flood loss reduction measures.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 3,800.

Estimated Time per Respondent: CAVs 3 hours per respondent; CACs 2 hours per respondent.

Estimated Total Annual Burden Hours: 15,200.

Frequency of Response: Annually.

COMMENTS: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524 or email muriel.anderson@fema.gov.

Dated: February 26, 1999.

Thomas F. Behm,

Acting Director, Program Services Division, Operations Support Directorate.

[FR Doc. 99–5613 Filed 3–8–99; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 23, 1999.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Jean Marie Champagne, Mandeville, Louisiana; to acquire additional voting shares of American Bancshares - Red River, Inc., Coushatta, Louisiana, and thereby indirectly acquire American Bank and Trust Company, Coushatta, Louisiana.

Board of Governors of the Federal Reserve System, March 3, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–5732 Filed 3–8–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 2, 1999.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Asian Financial Corporation, Philadelphia, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Asian Bank, Philadelphia, Pennsylvania.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. C-B-G, Inc., Wilton, Iowa; to acquire up to 100 percent of the voting shares of Peoples National Corporation, Columbus Junction, Iowa, and thereby indirectly acquire Community Bank, Muscatine, Iowa. Comments regarding this application must be received not later than March 23, 1999.

C. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Stearns Financial Services, Inc. Employee Stock Ownership Plan and Trust, St. Cloud, Minnesota; to acquire an additional 5.5 percent of the voting shares of Stearns Financial Services, Inc., St. Cloud, Minnesota, and thereby indirectly acquire Stearns Bank Arizona, Scottsdale, Arizona; Stearns Bank, N.A., Holdingford, Minnesota; Stearns Bank Canby, N.A., Canby, Minnesota; Stearns Bank, N.A., Upsala, Minnesota; Stearns Bank, N.A., St. Cloud, Minnesota; and Stearns Bank, N.A., Evansville, Minnesota.

C. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. First National Bank of Nevada Holding Company, Scottsdale, Arizona; to acquire 100 percent of the voting shares of First Bank of Arizona, N.A., Scottsdale, Arizona.

Board of Governors of the Federal Reserve System, March 3, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–5731 Filed 3–8–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the

companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 23, 1999.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Wells Fargo & Company, San Francisco, California; Norwest Mortgage, Inc., Des Moines, Iowa; and Norwest Ventures, LLC, Des Moines, Iowa; to engage *de novo* in a joint venture through its subsidiary, Norwest Pinnacle Mortgage, LLC, Reno, Nevada (dba Pinnacle Mortgage), in residential mortgage lending, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, March 3, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–5733 Filed 3–8–99; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Project

Title: Refuge Unaccompanied Minor Placement Report; Refuge Unaccompanied Minor Report.

OMB No.: 0970–0034.

Description: These two reports collect information necessary to Administer the refuge unaccompanied minor program. The ORR–3 (placement Report) is submitted to ORR by the service provider agency at initial placement and whenever there is a change in the child's status, including termination from the program. The ORR–4 (Progress Report) is submitted annually and records the child's progress towards the goals listed in the child's case plan.

Respondents: State, Local or Tribal Government.

Annual Burden Estimates.

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Replacement Report	20	50	.417	417
Progress Report	20	55	.250	275

Estimated Total Annual Burden Hours: 692.

In compliance with the requirements of Section 3506(c)(2)(A) the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: March 3, 1999.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 99–5741 Filed 3–8–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission For OMB Review; Comment Request

Title: Grants to States for Access and Visitation—Program Data.

OMB No.: New.

Description: As required by Paragraphs 303.109(a), (b) and (c) of the PRWORA Act, States are directed to monitor and evaluate their access and visitation programs using a set of criteria aimed at providing detailed descriptions of each funded program. To that end, States will use collection techniques available to the Administration for Children and Families and the Office of Child Support Enforcement.

Specifically, paragraph (a) requires States to monitor all access and visitation programs to ensure that services funded under these programs are: (1) Authorized under section 469B(a) of the Act; and (2) efficiently and effectively provided while complying with reporting and evaluation requirements, as set forth in paragraphs 303.109(b) and 303.109(c). Paragraph 303.109(b) allows State programs funded by section 469B of the act to be evaluated using data gathered to measure the effectiveness of program operations. States also are required to assist in the evaluation of programs deemed significant of promising by the Department, as directed by program memorandum. Paragraph 303–109(c) requires that States provide a detailed description of each funded program by including such information as: service providers and administrators, service area, population served, program goals,

application or referral process, referral agencies, nature of the program, activities provided, and length and features of a ''completed'' program. Other required information from the program also includes: number of applicants or referrals for each program, the number of program participants in the aggregate and by eligible activity, and the total number of graduates in the aggregate and by eligible activities (e.g., mediation, education etc.).

This information is proposed in order to assess: (1) The demand for the program and effectiveness of outreach and ability of the program to meet demand, (2) the service population served and scope and size of the program, and (3) whether such recipients are completing standard program requirements. States would be required to report this information annually, collected at a date and in a form as the Secretary may prescribe in program instructions from time to time.

The Office of Child Support Enforcement will use information gathered from the data collection instrument to report on the programs to the Congress in its annual report. States may use this information to assess demand for an utilization of their programs when considering funding options and make appropriate program changes from year to year. Funded agencies will use the information to assess effectiveness of project administration and design. Public interest groups will use the information to keep apprised of services provided to consitituencies.

Respondents: State, Local or Tribal Government.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Access and Visitation	216	1	24	5,184.

Estimated Total Annual Burden Hours: 5,184.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, *Attn:* ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Lori Schack.

Dated: March 3, 1999.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 99–5740 Filed 3–8–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Child Care and Development Fund Tribal Plan Preprint.

OMB No.: New.

Description: The Child Care and Development Fund Plan Preprint serves as the agreement between the grantee (Indian Tribe or tribal organization) and the Federal government as to how the Block Grant programs will be operated. The plans provide assurances that the CCDF funds will be administered in conformance with legislative requirements, Federal regulations at 45 CFR parts 98 and 99 and other applicable instructions or guidelines issued by the Administration for Children and Families (ACF). The Tribal Plan Preprint (ACF Form 118A) is currently approved through 5/31/00 under the Plan Preprint approval for both State and Indian Tribes (OMB Approval Number 0970–0114). Since the tribal plan preprint must be revised to reflect the CCDF amended regulations (published 7/24/98 at 63 FR 39936–39998), it is being disaggregated from the State plan preprint approval. Therefore, a new collection of OMB control number is requested.

Respondents: State, Local or Tribal Government.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
CCDF Plan Preprint	253	.5	35	4,427
CCDF Plan Amendments	253	.5	3	380

Estimated Total Annual Burden Hours: 4,807.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of Information between 30 to 60 days after publication of this document in the **Federal Register.** Therefore, a comment is best assured to having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Lori Schack.

Dated: March 4, 1999.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 99–5742 Filed 3–8–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on Nurse Education and Practice; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of April 1999.

Name: National Advisory Council on Nurse Education and Practice (NACNEP).

Date and Time: April 15, 1999; 8:30 a.m.—5:00 p.m., April 16, 1999; 8:30 a.m.—3:00 p.m.

Place: Chesapeake Room, Silver Spring Holiday Inn, 8777 Georgia Avenue, Silver Spring, Maryland 20910.

The meeting is open to the public.

Agenda: Updates on and discussion of Agency, Bureau and Division activities, and the legislative and budget status of programs; review of issues, policy goals, and options of National Agenda for Nursing Workforce Diversity; Council strategic planning; and profile of the Nursing Education Opportunities for Individuals from Disadvantaged Backgrounds Program.

Anyone interested in obtaining a roster of members, minutes of the meeting, or other relevant information should write or contact Ms. Elaine G. Cohen, Executive Secretary, National Advisory Council on Nurse Education and Practice, Parklawn Building, Room 9–35, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–5786.

Agenda items are subject to change as priorities dictate.

Dated: March 3, 1999.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–5679 Filed 3–8–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (''the Program''), as required by section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Court of Federal Claims, 717 Madison Place, N.W., Washington, D.C. 20005; (202) 219–9657. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 8A–46, Rockville, MD 20857; (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.*, provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated her responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at section 2114 of the PHS Act or as set forth at 42 CFR 100.3, as applicable. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a list of petitions received by HRSA on July 2, 1998, through December 23, 1998.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

(a) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Table but which was caused by'' one of the vaccines referred to in the Table, or

(b) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading **FOR FURTHER INFORMATION CONTACT**), with a copy to HRSA addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, Room 8–05, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

1. Casey and Charles Riley on behalf of Haley Brooke Riley, Birmingham, Alabama, Court of Federal Claims Number 98–0561 V
2. Patricia A. Cooper, Honolulu, Hawaii, Court of Federal Claims Number 98–0572 V
3. Marilyn L. Dodd on behalf of Heather R. Dodd, Tulsa, Oklahoma, Court of Federal Claims Number 98–0575 V

4. Amy Letterman on behalf of Blake Letterman, Springfield, Missouri, Court of Federal Claims Number 98–0584 V
5. Teresa Fitzgerald on behalf of Kyle Thomas Kerr, North Chili, New York, Court of Federal Claims Number 98–0587 V
6. Tania Murray on behalf of Chastity Murray, Poteau, Oklahoma, Court of Federal Claims Number 98–0607 V
7. Jessicah R. Mangan, East Stroudsburg, Pennsylvania, Court of Federal Claims Number 98–0607 V
8. Robin and Timothy Faber on behalf of Ryan Timothy Faber, Tampa, Florida, Court of Federal Claims Number 98–0617 V
9. Karen and Wendell Lee Copeland on behalf of Kyle Christian Copeland, Springfield, Missouri, Court of Federal Claims Number 98–0618 V
10. Joan Viscontini on behalf of Paul Viscontini, Vienna, Virginia, Court of Federal Claims Number 98–0619 V
11. Bohn D. Dunbar, Ph.D., Vienna, Virginia, Court of Federal Claims Number 98–0627 V
12. Susan and Scott Fahey on behalf of Morgan Fahey, New York, New York, Court of Federal Claims Number 98–0633 V
13. Patricia Hittner on behalf of Angela O'Connell, Boston, Massachusetts, Court of Federal Claims Number 98–0638 V
14. Martha J. Toomey on behalf of Jeffrey A. McCord, Washington, D.C., Court of Federal Claims Number 98–0643 V
15. Tamara W. Bauer on behalf of Joy Ellen Bauer, Charleston, South Carolina, Court of Federal Claims Number 98–0644 V
16. April and Timothy Witte on behalf of Trentino Witte, Orland Park, Illinois, Court of Federal Claims Number 98–0648 V
17. Dawn S. Lowrey, Derry, New Hampshire, Court of Federal Claims Number 98–0657 V
18. Rose and Biagio DePiano on behalf of Domenica DePiano, Bridgeport, Connecticut, Court of Federal Claims Number 98–0659 V
19. Cathy and Bruce Babcock on behalf of Julie Babcock, Indianapolis, Indiana, Court of Federal Claims Number 98–0660 V
20. LaWanda R. Wash, Burton, Michigan, Court of Federal Claims Number 98–0669 V
21. Vicki Hehr on behalf of Nicole Hehr, Tualatin, Oregon, Court of Federal Claims Number 98–0670 V
22. Bobbi L. Chase on behalf of Samantha Joyce Chase, Pomona, New Jersey, Court of Federal Claims Number 98–0678 V
23. Kimberly Byfield on behalf of Avery Byfield, Boston, Massachusetts, Court of Federal Claims Number 98–0701 V
24. Randi Taylor Munsell on behalf of Taylor Lane Munsell, Sarasota, Florida, Court of Federal Claims Number 98–0702 V
25. Robert C. Hockett, Lawrence, Kansas, Court of Federal Claims Number 98–0723 V
26. LaNette C. Terrell on behalf of Naydeen Terrell, Deceased, Chicago, Illinois, Court of Federal Claims Number 98–0732 V
27. Rosemary and Matt Atole on behalf of Matt Lee Atole, Carlsbad, New Mexico, Court of Federal Claims Number 98–0737 V
28. Debbie and Jim Phillips on behalf of Julia Phillips, Orlando, Florida, Court of Federal Claims Number 98–0744 V
29. Mamie Lovett on behalf of Seni Lovett, Vienna, Virginia, Court of Federal Claims Number 98–0749 V
30. Christine Beville on behalf of Mason Beville, Houston, Texas, Court of Federal Claims Number 98–0755 V
31. Stephanie Voung and Ken Tran on behalf of Phillip VT Tran, Deceased, Tampa, Florida, Court of Federal Claims Number 98–0756 V
32. Shirley Bachini on behalf of Joseph J. Bachini, II, Peabody, Massachusetts, Court of Federal Claims Number 98–0757 V
33. Anneta Olevskaya, Encino, California, Court of Federal Claims Number 98–0773 V
34. Denise and John Kane on behalf of Rosemary Kane, Erdenheim, Pennsylvania, Court of Federal Claims Number 98–0775 V
35. Sharon Perkins Falu on behalf of Kashara Angina Falu, Mobile, Alabama, Court of Federal Claims Number 98–0779
36. Allison Gibson and Darlene Gibson on behalf of Emily Gibson, Dallas, Texas, Court of Federal Claims Number 98–0782 V
37. Ellen Rulavage on behalf of Aaron Rulavage, Pottsville, Pennsylvania, Court of Federal Claims Number 98–0790 V
38. Thad Edward Rippy, Plymouth, Indiana, Court of Federal Claims Number 98–0795 V
39. Todd Nilson on behalf of Joseph Edward Nilson, Deceased, Sioux City, Iowa, Court of Federal Claims Number 98–0797 V
40. Deanna Amato on behalf of Miranda M. Amato, Columbus, Wisconsin, Court of Federal Claims Number 98–0803 V
41. Sonia and Enrique Andreu on behalf of Enrique M. Andreu, Miami, Florida, Court of Federal Claims Number 98–0817 V
42. Teresa Martinez on behalf of Steven Martinez, South Gate, California, Court of Federal Claims Number 98–0818 V
43. Evangelina Uvalle on behalf of Bryan Perez, Waco, Texas, Court of Federal Claims Number 98–0824 V
44. Natashia Brown on behalf of Willie Brown, III, Rockledge, Florida, Court of Federal Claims Number 98–0830 V
45. Donald Dorman on behalf of Alston Ray Dorman, Deceased, Jasper, Alabama, Court of Federal Claims Number 98–0831 V
46. Andrea Shirk, Wells, Minnesota, Court of Federal Claims Number 98–0839 V
47. Gale Sikora on behalf of Anthony Sikora, Vienna, Virginia, Court of Federal Claims Number 98–0843 V
48. Cynthia DeSouza on behalf of Stacey DeSouza, Newark, New Jersey, Court of Federal Claims Number 98–0845 V
49. Cynthia DeSouza on behalf of Stacey DeSouza, Newark, New Jersey, Court of Federal Claims Number 98–0846 V
50. Kimberly and Thomas Francis on behalf of Victoria Francis, West Chester, Pennsylvania, Court of Federal Claims Number 98–0853 V
51. Rosemary and Joseph Curtin on behalf of Mary Clare Curtin, Winchester, Virginia, Court of Federal Claims Number 98–0870 V
52. Idalia Williford on behalf of Zoe Williford, Summit, New Jersey, Court of Federal Claims Number 98–0889 V
53. Idalia Williford on behalf of Melissa Williford, Deceased, Summit, New Jersey, Court of Federal Claims Number 98–0890 V
54. Karen Dudely, North Palm Beach, Florida, Court of Federal Claims Number 98–0892 V
55. Bruny Carlo on behalf of Brian Carlo, Elizabeth, New Jersey, Court of Federal Claims Number 98–0895 V
56. Gary Holliday on behalf of Abigail Holliday, San Antonio, Texas, Court of Federal Claims Number 98–0900 V
57. Linda Tuttle, Renton, Washington, Court of Federal Claims Number 98–0909 V
58. Teresa Moberly on behalf of Molly Moberly, Peru, Nebraska, Court of Federal Claims Number 98–0910 V
59. Barbara Beatty on behalf of Teresa Serio, Vienna, Virginia, Court of Federal Claims Number 98–0911 V
60. Sofia Rodriguez on behalf of Donald Oliver Buercklin, Deceased, Miami Beach, Florida, Court of Federal Claims Number 98–0912 V
61. Nancy and Thomas Rotary on behalf of Nathan Rotary, Farmington, Michigan, Court of Federal Claims Number 98–0913 V
62. Marla Golding, Burlington, Massachusetts, Court of Federal Claims Number 98–0915 V

63. Helena and John Aiken on behalf of Olivia Aiken, Boston, Massachusetts, Court of Federal Claims Number 98–0917 V
64. Theresa and Michael Cedillo on behalf of Michelle Cedillo, Yuma, Arizona, Court of Federal Claims Number 98–0916 V
65. Maryanne and Gerald Nash on behalf of Patrick T. Nash, North Syracuse, New York, Court of Federal Claims Number 98–0918 V
66. Blanca Bahena, Lawndale, California, Court of Federal Claims Number 98–0920 V
67. Stanley Irving Lippmann, Seattle, Washington, Court of Federal Claims Number 98–0923 V
68. Marilyn J. Boren, Paris, Texas, Court of Federal Claims Number 98–0925 V
69. Andrea and Tony Arnett on behalf of Andrew Arnett, Kokomo, Indiana, Court of Federal Claims Number 98–0933 V

Dated: March 1, 1999.

Claude Earl Fox,

Administrator.

[FR Doc. 99–5680 Filed 3–8–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions, and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (DHHS), Health Resources and Services Administration (60 FR 56605 as amended November 6, 1995, as last amended at 63 FR 47033, September 3, 1998). This notice reflects the revision of the Division of Facilities and Loans (RR3), in the Office of Special Programs. Amend the functional statement to read as follows:

Division of Facilities and Loans

The Division plans and directs the development of regulations and program guidelines for administering loan, loan guarantee and interest subsidy programs for health care facilities. Specifically: (1) develops regulations, policy and procedures for administering loan and loan guarantee with interest subsidy programs; (2) administers the DHHS responsibility for facility construction, renovation, and modification as described in interagency memoranda of agreement; (3) provides overall consultation and guidance on factors affecting future national requirements in specific types of facilities utilization; (4) maintains an automated data system for the issuance of periodic and special reports and for the manipulation of institution specific data in performing tests for financial feasibility; (5) assists in the evaluation and analysis of applications for construction under assigned grant programs; (6) reviews and recommends action on: (a) proposals for new health facilities or additions to or modernization of existing facilities under loan programs assigned to the Division, (b) requests for mortgage relief, such as forbearance of principal and/or interest payment, suspension of sinking fund deposits, modifications of loan terms, and (c) requests for recovery and/or waiver of repayment of Federal facilities loan funds; (7) provides advice and guidance to regional staff on statutory and regulatory provisions and policy and procedures for administering programs assigned to the Division; (8) maintains liaison with and coordinates its activities and jointly develops pertinent programmatic materials with other components of the HRSA, DHHS, other concerned Federal agencies, and with private lending institutions and associations; (9) provides program policy interpretation and technical assistance to other governmental and private organizations and institutions; and (10) administers the HRSA facilities engineering and construction assistance programs.

Delegations of Authority

All delegations and redelegations of authority which were in effect immediately prior to the effective date hereof have been continued in effect in them or their successors pending further redelegation.

This reorganization is effective upon date of signature.

Dated: February 26, 1999.

Claude Earl Fox,

Administrator.

[FR Doc. 99–5678 Filed 3–8–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 1999 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of Funding Availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) announces the availability of FY 1999 funds for the following activities. These activities are discussed in more detail under Section 3 of this notice. This notice is not a complete description of the activities; potential applicants must obtain a copy of the Guidance for Applicants (GFA) before preparing an application.

Activity	Application deadline	Estimated funds available (in millions)	Estimated No. of awards	Project period
Targeted Capacity Expansion	5/10/99	$12.5	25	Up to 3 yrs.
Targeted Capacity Expansion—HIV/AIDS	6/17/99	16	40	Up to 3 yrs.
HIV/AIDS Outreach Program	5/18/99	7	20–25	Up to 3 yrs.

Note: SAMHSA also published notices of available funding opportunities for FY 1999 in subsequent issues of the **Federal Register**.

The actual amount available for awards and their allocation may vary, depending on unanticipated program requirements and the volume and quality of applications. Awards are usually made for grant periods from one to three years in duration. FY 1999 funds for activities discussed in this announcement were appropriated by the Congress under Public Law No. 105–277. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting

priority areas. The SAMHSA Centers' substance abuse and mental health services activities address issues related to Healthy People 2000 objectives of Mental Health and Mental Disorders; Alcohol and Other Drugs; Clinical Preventive Services; HIV Infection; and Surveillance and Data Systems. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: 202–512–1800).

GENERAL INSTRUCTIONS: Applicants must use application form PHS 5161–1 (Rev. 5/96; OMB No. 0937–0189). The application kit contains the GFA (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from the organization specified for each activity covered by this notice (see Section 3).

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. This is to ensure receipt of all necessary forms and information, including any specific program review and award criteria.

The PHS 5161–1 application form and the full text of each of the activities (i.e., the GFA) described in Section 4 are available electronically via SAMHSA's World Wide Web Home Page (address: http://www.samhsa.gov).

APPLICATION SUBMISSION: Unless otherwise stated in the GFA, applications must be submitted to: SAMHSA Programs, Center for Scientific Review, National Institutes of Health, Suite 1040, 6701 Rockledge Drive MSC–7710, Bethesda, Maryland 20892–7710 * (* Applicants who wish to use express mail or courier service should change the zip code to 20817.)

APPLICATION DEADLINES: The deadlines for receipt of applications are listed in the table above. Please note that the deadlines may differ for the individual activities.

Competing applications must be received by the indicated receipt dates to be accepted for review. An application received after the deadline may be acceptable if it carries a legible proof-of-mailing date assigned by the carrier and that date is not later than one week prior to the deadline date. Private metered postmarks are not acceptable as proof of timely mailing.

Applications received after the deadline date and those sent to an address other than the address specified above will be returned to the applicant without review.

FOR FURTHER INFORMATION CONTACT: Requests for activity-specific technical information should be directed to the program contact person identified for each activity covered by this notice (see Section 3).

Requests for information concerning business management issues should be directed to the grants management contact person identified for each activity covered by this notice (see Section 3).

SUPPLEMENTARY INFORMATION: To facilitate the use of this Notice of Funding Availability, information has been organized as outlined in the Table of Contents below. For each activity, the following information is provided:

- Application Deadline.
- Purpose.
- Priorities.
- Eligible Applicants.
- Grants/Amounts.
- Catalog of Federal Domestic Assistance Numbers.
- Contacts.
- Application Kits.

Table of Contents

1. Program Background and Objectives
2. Criteria for Review and Funding
   2.1 General Review Criteria
   2.2 Funding Criteria for Scored Applications
3. Special FY 1999 Substance Abuse and Mental Health Services Activities
   3.1. Grants to Expand Substance Abuse Treatment Capacity in Targeted Areas of Need (Short Title: Targeted Capacity Expansion, GFA No. TI 99–002)
   3.2. Targeted Capacity Expansion Program for Substance Abuse Treatment and HIV/AIDS Services (Short Title: TCE/HIV, GFA No. TI 99–004)
   3.3. Community-Based Substance Abuse and HIV/AIDS Outreach Program (Short Title: HIV/AIDS Outreach Program, GFA No. TI 99–005)
   3.4. SAMHSA/CSAT FY 1999 Programs for Substance Abuse Treatment and/or HIV/AIDS Services
   3.5. SAMHSA Technical Assistance Workshop
4. Public Health System Reporting Requirements
5. PHS Non-use of Tobacco Policy Statement
6. Executive Order 12372

1. Program Background and Objectives

SAMHSA's mission within the Nation's health system is to improve the quality and availability of prevention, early intervention, treatment, and rehabilitation services for substance abuse and mental illnesses, including co-occurring disorders, in order to improve health and reduce illness, death, disability, and cost to society.

Reinventing government, with its emphases on redefining the role of Federal agencies and on improving customer service, has provided SAMHSA with a welcome opportunity to examine carefully its programs and activities. As a result of that process, SAMHSA moved assertively to create a renewed and strategic emphasis on using its resources to generate knowledge about ways to improve the prevention and treatment of substance abuse and mental illness and to work with State and local governments as well as providers, families, and consumers to effectively use that knowledge in everyday practice.

SAMHSA differs from other agencies in focusing on needed information at the services delivery level, and in its question-focus. Dissemination and application are integral, major features of the programs. SAMHSA believes that it is important to get the information into the hands of the public, providers, and systems administrators as effectively as possible. Technical assistance, training, preparation of special materials will be used, in addition to normal communications means.

SAMHSA also continues to fund legislatively-mandated services programs for which funds are appropriated.

2. Criteria for Review and Funding

Consistent with the statutory mandate for SAMHSA to support activities that will improve the provision of treatment, prevention and related services, including the development of national mental health and substance abuse goals and model programs, competing applications requesting funding under the specific project activities in Section 3 will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures.

2.1 General Review Criteria

As published in the **Federal Register** on July 2, 1993 (Vol. 58, No. 126), SAMHSA's ''Peer Review and Advisory Council Review of Grant and Cooperative Agreement Applications and Contract Proposals,'' peer review groups will take into account, among other factors as may be specified in the application guidance materials, the following general criteria:

- Potential significance of the proposed project;
- Appropriateness of the applicant's proposed objectives to the goals of the specific program;

• Adequacy and appropriateness of the proposed approach and activities;
• Adequacy of available resources, such as facilities and equipment;
• Qualifications and experience of the applicant organization, the project director, and other key personnel; and
• Reasonableness of the proposed budget.

2.2 Funding Criteria for Scored Applications

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council (if applicable) review process.

Other funding criteria will include:
• Availability of funds.

Additional funding criteria specific to the programmatic activity may be included in the application guidance materials.

3. Special FY 1999 SAMHSA Activities

3.1. Grants to Expand Substance Abuse Treatment in Targeted Areas of Need (Short Title: Targeted Capacity Expansion, GFA No. TI 99–002)

• Application Deadline: May 10, 1999.

• Purpose: The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Treatment (CSAT) announces the availability of funds for grants to expand substance abuse treatment capacity in targeted areas. This program is designed to address gaps in treatment capacity by supporting rapid and strategic responses to demands for substance abuse (including alcohol and drug) treatment services. This announcement is a reissuance (with revisions) of a prior announcement by the same title, ''Targeted Capacity Expansion,'' GFA No. TI 98-006. Applications are solicited for a targeted response to treatment capacity problems including communities with serious, emerging drug problems as well as communities with innovative solutions to unmet needs. Applicants must have an existing infrastructure (facility/program) and may either apply to expand (add treatment slots) an existing treatment program or create a new program. The proposed treatment services must be based on sound, scientifically based theory or empirical evidence of effectiveness. Further, the services should be designed to significantly impact the identified treatment gap or emerging issue within the three year grant period. A plan for continuation of the effort beyond the life of the grant should be presented if such continuation is expected to be necessary. Finally, the proposed services should be consistent with and fit within the overall response to substance abuse problems in the target area.

• Eligible Applicants: Only units of local (cities, towns, counties) and State governments and Indian Tribes and tribal organizations (as defined in the Indian Self-Determination Act—25 U.S.C., section 450b) are eligible to apply. These applicants may engage (coordinate/subcontract) the skills of a wide variety of private, non-profit, and community-based organizations not eligible to apply on their own; however, the applicant will be legally, administratively and fiscally responsible for the grant. This is not a pass through arrangement; ''umbrella'' applications will not be accepted for review. Eligibility is being limited to cities, towns, counties, regional authorities, boroughs, States, Tribes, and tribal organizations in recognition of the primacy of their responsibility for, and interest in, providing for the needs of their citizens, and because the success of the program will depend upon the authority and ability available to broadly coordinate the variety of resources to ensure full program success. Furthermore, in addition to licensure, applicants/proposed providers of services must have been providing substance abuse treatment services for a minimum of two years prior to the date of application. Without this documentation, applications will be considered ineligible and not considered for peer review. SAMHSA believes that only existing providers have the infrastructure and expertise to address emerging and unmet needs as quickly as possible. CSAT is interested in applications from local governments because they are closer to the problem and in a better position to identify emerging needs and respond quickly; therefore, in its award decision-making process, CSAT will give priority to applications from local (cities, towns, counties) governments, and Indian Tribes and tribal organizations.

• Grants/Amounts: Approximately $12.5 million will be available to support awards in FY 1999. Of this amount, $8 million is available for general program applications from units of local (cities, towns, counties) and State government, and Indian Tribes and tribal organizations; up to $2 million is reserved for applications from such entities from Alaska for new projects (for women and children in rural areas) and Iowa (for methamphetamine abuse) as was specified in Congressional report language; and up to $2.5 million is reserved for applications from such government entities specifically addressing substance abuse and HIV/AIDS in African American, Hispanic/Latino, and other racial/ethnic minority communities.

AVAILABILITY OF FUNDS: FY 1999

Eligible Entities: All applicants must be units of local or State government or Indian Tribes and tribal organizations	Available funds
Entities from Alaska that address women and children in rural areas, and	Up to $1 million.
Entities from Iowa that address methamphetamine abuse	Up to $1 Million.
Entities that specifically address substance abuse and HIV/AIDS in African American, Hispanic/Latino, and/or other racial/ethnic minority communities. Applications will be divided into two population categories for purposes of review: —those proposing to serve populations of more than 30,000; and —those proposing to serve populations of 30,000 or fewer whether urban or rural.	Up to $2.5 million.
General Program Entities. Applications will be divided into two population categories for purposes of review: —those proposing to serve populations of more than 30,000; and —those proposing to serve populations of 30,000 or fewer whether urban or rural.	Up to $8 million*.
Total	$12.5 million

* Average awards of $100,000–$500,000 apply to these entities.

Support may be requested for a period of up to three (3) years.

In accordance with the Congressional conference agreement and based on previously planned targeted HIV/AIDS activities, the $2.5 million noted above

is intended to augment the capabilities of substance abuse treatment programs to address the growing HIV/AIDS problem in African American, Hispanic/Latino, and other racial/ethnic minority communities. As required by the Targeted Capacity Expansion program, applicants applying for grants to enhance or expand substance abuse treatment and HIV/AIDS, STDs, TB, and hepatitis B and C services must have an existing infrastructure (program/facility). Applicants may request funding to: (1) Expand organizational capacity to provide a more comprehensive array of community-based services through well defined linkages to other organizations/providers; (2) expand program capacity by increasing the number of slots in a residential, day, or outpatient substance abuse treatment program, or by adding a new component (outpatient/continuing care) to an existing program; (3) expand a core program to accommodate clients who are HIV positive or AIDS symptomatic; and (4) enhance accessibility of existing HIV/AIDS, STDs, TB, and hepatitis B and C services by adding community health education and risk reduction programming, outreach services, mobile HIV, STD, TB, and hepatitis B and C services including counseling/testing/treatment capabilities. Federal funds may not be used to carry out syringe exchange programs, such as the purchase and distribution of syringes and/or needles, nor can funds authorized under this program be used to pay for pharmacologies for antiretroviral therapy, STDs, TB and hepatitis B and C.

- Catalog of Domestic Federal Assistance: 93.230.

- Program Contact: For programmatic or technical assistance (not for application kits) contact: Clifton Mitchell, Chief, Treatment and Systems Improvement Branch, Division of Practice and Systems Development, Center for Substance Abuse Treatment, SAMHSA, Rockwall II, 6th Floor, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–8804.

For grants management assistance, contact: Andrea L. Brandon, Division of Grants Management, OPS, Substance Abuse and Mental Health Services Administration, Rockwall II, 6th Floor, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–9667.

- Application Kits are available from: National Clearinghouse for Alcohol and Drug Information, P.O. Box 2345, Rockville, Maryland 20847–2345, 1–800–729–6686.

3.2. Targeted Capacity Expansion Program for Substance Abuse Treatment and HIV/AIDS Services (Short Title: TCE/HIV, GFA No, TI 99–004)

- Application Deadline: June 17, 1999.

- Purpose: The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Treatment (CSAT) announces the availability of funds for grants to enhance and expand substance abuse treatment and services related to HIV/AIDS in African American, Hispanic/Latino, and other racial/ethnic minority communities highly affected by the twin epidemics of substance abuse and HIV/AIDS. This program seeks to address gaps in substance abuse treatment capacity, and increase the accessibility and availability of substance abuse treatment and related HIV/AIDS services (including STDs, TB and hepatitis B and C) to African American, Hispanic/Latino, and other racial/ethnic minority substance abusers. This announcement solicits applications for innovative targeted responses to the epidemic of substance abuse and related HIV/AIDS.

- SAMHSA CSAT is soliciting applications from organizations that have the capacity to provide substance abuse treatment services to African American, Hispanic/Latino, and other racial/ethnic minority communities. While many organizations have been successful over the years in securing linkages with providers of primary health care, mental health, and HIV/AIDS services, these efforts have typically not provided specific mechanisms to include the participation of indigenous members of the affected community, and those community based organizations with experience in serving these communities have not been a critical component of the linkage strategy. SAMHSA CSAT is most interested in applications that demonstrate a comprehensive, integrated, creative and community-based response to a targeted, well documented substance abuse and HIV/AIDS treatment need/problem. SAMHSA/CSAT believes that the accomplishment of this goal requires that applications be submitted by organizations that (1) have strong ties to the grassroots/community-based organizations that are deeply rooted in the culture of the targeted community, and (2) have demonstrated experience in providing culturally appropriate services to the targeted communities in the targeted area(s).

- Priorities: None.

- Eligible Applicants: Applications may be submitted by public and domestic private non-profit and for-profit entities, such as units of State or local government and grassroots and/or community-based organizations that have the capacity to provide substance abuse treatment services to African American, Hispanic/Latino, and other racial/ethnic minority communities. Targeted communities must be located in a metropolitan statistical area (MSA) with an annual AIDS case rate of 20/100,000 or in a State with an annual AIDS case rate of or greater than 10/100,000. SAMHSA CSAT's intention is to target areas at highest risk for HIV transmission. In the absence of consistent reporting of HIV data by all jurisdictions, the best indicator of the magnitude of the epidemic is AIDS case rates derived from Center for Disease Control and Prevention HIV/AIDS Surveillance Reports.

- In addition to the basic requirements for eligibility, applicants must provide evidence of providing substance abuse treatment services for a minimum of two years prior to the application. SAMHSA CSAT believes that only existing providers have the infrastructure and expertise to address emerging and unmet needs as quickly as possible.

- Grants/Amounts: Approximately $16 million will be available to support awards under this announcement in FY 1999. Awards are expected to range from $100,000 to $600,000 (direct and indirect costs) for projects directed to the following substance abusing populations in African American, Hispanic/Latino, and other racial/ethnic minority communities: women and their children (about $10 million); adolescents (about $3 million); and men who inject drugs and men who have sex with men and inject drugs(MSM) (about $3 million). Support may be requested for a period of up to three (3) years.

- Catalog Domestic Federal Assistance: 93.230

- Program Contact: For programmatic or technical assistance (not for application kits) contact: Clifton Mitchell, Chief, Treatment and Systems Improvement Branch, Division of Practice and Systems Development, Center for Substance Abuse Treatment, SAMHSA, Rockwall II, 6th Floor, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–8804.

For grants management assistance, contact: Andrea L. Brandon, Division of Grants Management, OPS, Substance Abuse and Mental Health Services Administration, Rockwall II, 6th Floor, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–9667.

• Application kits are available from: National Clearinghouse for Alcohol and Drug Information, P.O. Box 2345, Rockville, Maryland 30847–2345, 1–800–729–6686.

3.3. Community-Based Substance Abuse and HIV/AIDS Outreach Program (Short Title: HIV/AIDS Outreach Program, GFA No. TI-99–005)

• Application Deadline: May 18, 1999.

• Purpose: The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Treatment (CSAT), announces the availability of funds for grants to support community-based HIV/AIDS outreach programs in African American, Hispanic/Latino, and other racial/ethnic minority communities with high rates of substance abuse and AIDS. This program, hereinafter referred to as the ''HIV/AIDS Outreach Program'', is designed to develop community-based outreach projects to provide HIV counseling and testing services, health education and risk reduction information, access and referrals to sexually transmitted disease (STD) and Tuberculosis (TB) testing, substance abuse treatment, primary care, mental health and medical services for those who are HIV positive or have AIDS.

The purpose of this announcement is to promote behavioral transition and change among injecting drug users (IDUs) and other drug users with respect to risk exposures to HIV infection, STDs, TB and hepatitis, and to increase the number of substance abusers entering treatment among African American, Hispanic/Latino, and other racial/ethnic minority populations in high AIDS case rate areas.

All applicants are expected to develop outreach program strategies that can effectively target women who are IDUs, the sexual partners of IDUs, sex workers or women who exchange sex for drugs, men who are IDUs and their needle sharing partners, men who have sex with men (MSM) and MSM who inject drugs, and adolescents. Projects are expected to formulate an overall outreach strategy that specifies the proposed interventions and how they will affect behavior change in the targeted population(s). Projects are expected to accomplish this by: (1) providing community-based outreach services to encourage entry and facilitate access to substance abuse treatment; (2) offering HIV/AIDS risk reduction education interventions; (3) making available medical diagnostic testing and screening for HIV, STDs, (e.g., syphilis, gonorrhea, chlamydia), and TB; and (4) providing linkages and follow-up primary medical care, mental health, and social services, as well as other prophylactic means to affect those behavior changes most likely to decrease the risk of acquiring or transmitting HIV, STDs, TB, hepatitis B and C and related diseases.

• Priority: None.

• Eligible Applicants: Applicants may be public and domestic private non-profit and for-profit entities, such as units of State or local government and community-based organizations. Eligible organizations must have two years of experience in providing outreach services to out-of-treatment substance abusers, and be located in Metropolitan Statistical Areas (MSAs) with annual AIDS case rates that are greater than 20 per 100,000 or in States with annual AIDS case rates greater than 10 per 100,000 population. While SAMHSA/CSAT acknowledges that outreach services provide a vital adjunctive resource to treatment irrespective of the locality, SAMHSA's intention in this announcement is to target areas deemed to be at highest risk for HIV transmission. In the absence of consistent reporting of HIV seroprevalence data by all jurisdictions, the best indicators of the magnitude of the epidemic are AIDS case rates derived from the Centers for Disease Control and Prevention (CDC) HIV Surveillance Reports. In addition, SAMHSA/CSAT believes that only existing providers have the infrastructure and the expertise to address unmet outreach needs as quickly as possible.

• SAMHSA/CSAT encourages applications from substance abuse treatment programs, AIDS-specific organizations, community-based organizations, community health centers, STD clinics, or other entities (e.g., central intake and referral agencies, TASC agencies) that have a good record of reaching and serving hardcore, chronic drug users and their-sex/needle-sharing partner(s) and facilitating their entry into substance abuse treatment.

• Grants/Amounts: Approximately $7.0 million will be available in FY 1999 to support 20–25 awards under this announcement. The average award is expected to range from $300,000 to $400,000 in total costs (direct + indirect). Federal funds awarded under this announcement may not be used to carry out syringe exchange programs, such as the purchase and distribution of syringes and/or needles; nor pay for pharmacologics for antiretroviral therapy, STDs, TB and hepatitis B and C. Support may be requested for a period of up to three (3) years.

• Catalog of Federal Domestic Assistance: 93.230

• For programmatic or technical assistance (not for application kits) contact: David C. Thompson, Clinical Interventions and Organizational Model Branch, Division of Practice and Systems Development, Center for Substance Abuse Treatment, SAMHSA, Rockwall II, 6th Floor, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6523, E-Mail: dthompso@SAMHSA.gov.

For grants management issues, contact: Andrea L. Brandon, Division of Grants Management, OPS, Substance Abuse and Mental Health Services Administration, Rockwall II, 6th Floor, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–9667.

• For application kits, contact: National Clearinghouse for Alcohol and Drug Information, P.O. Box 2345, Rockville, MD 20847–2345, 1–800–729–6686.

3.4. SAMHSA/CSAT FY 1999 Programs for Substance Abuse Treatment and/or HIV/AIDS Services

SAMHSA/CSAT has three FY 1999 programs under which funding is available for substance abuse treatment and/or HIV/AIDS services. The three programs are: TI 99–002—Grants to Expand Substance Abuse Treatment Capacity in Targeted Areas of Need; TI 99–004—Targeted Capacity Expansion Program for Substance Abuse Treatment and HIV/AIDS Services; and TI 99–005—Community Based Substance Abuse and HIV/AIDS Outreach Program. The eligibility requirements vary for each program; therefore, potential applicants must refer to the specific announcement to determine if they are eligible to apply.

3.5. SAMHSA Technical Assistance Workshop

SAMHSA is sponsoring three technical assistance workshops for potential applicants. The workshops will be held at the following locations: March 11, 1999—Washington, DC; March 17, 1999—Chicago, IL; and March 19—Los Angeles, CA. For more information, please call Ms. Lisa Wilder, Workshop Coordinator, at 301–984–1471, extension 333.

4. Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications

submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements.

Application guidance materials will specify if a particular FY 1999 activity described above is/is not subject to the Public Health System Reporting Requirements.

5. PHS Non-use of Tobacco Policy Statement

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

6. Executive Order 12372

Applications submitted in response to all FY 1999 activities listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Office of Extramural Activities Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: March 4, 1999.

Nelba Chavez,

Administrator, SAMHSA.

[FR Doc. 99–5761 Filed 3–8–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N–18]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: April 1, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 3, 1999.

David S. Cristy,

Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Single Family Premium Collection Subsystem—Periodic (SEPCS–P).

Office: Housing.

OMB Approval Number: 2502–XXXX.

Description of the Need for the Information and its Proposed Use: The SEPCS–P will be used to collect mortgages monthly mortgage insurance premiums. CFR 203.264 requires mortgages to pay monthly MIP's electronically.

Form Number: None.

Respondents: State, Local or Tribal Government Business or Other For-Profit.

Frequency of Submission: Monthly.

Reporting burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
	18,000		12		1		21,600

Total Estimated Burden Hours: 21,600.

Status: New Collection.

Contact: Natalie Yee, HUD, (202) 708–1858 × 3500 Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: March 3, 1999.

[FR Doc. 99–5803 Filed 3–8–99; 8:45 am]

BILLING CODE 4201–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4443–N–03]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: March 16, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, an information collection package with respect to conducting an investigation of currently operating security contracts awarded under the Public and Assisted Housing Drug Elimination Act of 1990. The investigation is required by Subtitle G, Section 587 of the Quality Housing and Work Responsibility Act of 1998. The investigation covers only housing agencies that own or operate more than 4,500 public housing dwelling units. For each such agency, the Secretary must: (1) Determine whether the contractors under these contracts have complied with all laws and regulations regarding prohibition of discrimination in hiring practices; (2) determine whether the security contracts were awarded in accordance with applicable laws and regulations; (3) determine how many security contracts were awarded under emergency contracting procedures; and (4) evaluate the effectiveness of the security contracts. The Secretary is required to submit the findings of the investigation to the Congress no later than April 21, 1999.

Justification For Emergency Processing

Emergency processing of this request is necessary in order to complete the required investigation and compile the findings by the congressional deadline of April 21, 1999.

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (2) Enhance the quality, utility, and clarity of the information to be collected; and (3) Minimize the burden of the collection of information on those who are to respond. This Notice also lists the following information:

Title of Proposal: Public Housing Drug Elimination Program Security Contracts Review.

OMB Control Number, if applicable:

Description of the need for the information and proposed use: This information collection is needed to respond to the statutory requirement for an investigation of currently operating security contracts awarded under the Public and Assisted Housing Drug Elimination Act of 1990. The statutory requirement is contained in Subtitle G, Section 587 of the Quality Housing and Work Responsibility Act of 1998, Pub. L. 105–276.

Agency form numbers, if applicable: N/A.

Members of affected public: Nine housing agencies, and an estimated 13 private security companies (for profit or non-profit/resident operated).

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Nine public housing agencies and an estimated 13 security companies will prepare responses to the questionnaire for a total of 148 hours preparation time. This will be a one-time report.

Status of the proposed information collection:

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 2, 1999.

David S. Cristy,

Director, IRM Policy and Management Division.

[FR Doc. 99–5804 Filed 3–8–99; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

American Samoa Economic Advisory Commission

AGENCY: Office of Insular Affairs, Interior.

ACTION: American Samoa Economic Advisory Commission—notice of meeting.

SUMMARY: The American Samoa Economic Advisory Commission will conduct its first organizational meeting on Wednesday, March 24, 1999, in Washington, D.C. The meeting will convene at 3:00 p.m. at Room 7000 of the Main Interior Building, Department of the Interior, 1849 C Street, N.W. The purpose of the meeting is to introduce the members and organize the commission, discuss its objectives and goals, and plan for future hearings. The meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Nikolao I. Paula, Jr., Office of Insular Affairs, Department of the Interior, 1849 C Street, N.W., MS 4328, Washington, D.C. 20240, (202) 206–6816.

Dated: March 3, 1999.

Allen P. Stayman,

Director, Office of Insular Affairs.

[FR Doc. 99–5756 Filed 3–8–99; 8:45 am]

BILLING CODE 4310–RK–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 981208299–8299–01]

RIN 1018–ZA03

Notice of Availability of a Draft Addendum to the Final Handbook for Habitat Conservation Planning and Incidental Take Permitting Process

AGENCIES: Fish and Wildlife Service, Interior, and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of document availability; request for comments.

SUMMARY: The Fish and Wildlife Service and National Marine Fisheries Service (the Services) are publishing for comment a Draft Addendum to the final Handbook for Habitat Conservation Planning and Incidental Take Permitting Process (5-point policy guidance), which is included entirely within this notice. The purpose of the Draft Addendum is to provide additional clarifying guidance to the Services for conducting the incidental take permit program under section 10(a)(1)(B) of the Endangered Species Act including developing habitat conservation plans (HCPs). It also provides clarifying guidance to those who are applying for an incidental take permit. We believe the draft guidance will promote efficiency and nationwide consistency within and between the Services and improve the HCP program.

DATES: The Services must receive comments on or before May 10, 1999. We must receive your comments by this date for them to be considered during preparation of a final Addendum.

ADDRESSES: Send written comments regarding this Draft Addendum to the Division of Endangered Species, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 452, Arlington, Virginia 22203 (facsimile 703/358–1735); or to the Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, Maryland 20910 (facsimile 301/713–0376). Comments received will be available for public inspection, by appointment, during normal business hours at the above addresses.

FOR FURTHER INFORMATION CONTACT: E. LaVerne Smith, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, (telephone 703/358–2171, facsimile 703/358–1735), or Kevin Collins, Chief, Endangered Species Division, National Marine Fisheries Service (telephone 301/713–1401, facsimile 301/713–0376) at the above addresses.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act (ESA) was amended in 1982 to allow the taking of listed species incidentally to an otherwise lawful activity by non-Federal entities such as states, counties, local governments, and private landowners (section 10(a)(1)(B)). To receive a permit, the applicant submits a conservation plan (also referred to as an HCP) that meets the criteria included in the ESA and its implementing regulations (50 CFR parts 17 and 222). The Services recently amended those regulations to include ''No Surprises'' assurances (February 23, 1998, 63 FR 8859). To provide internal guidance on conducting the incidental take permit program, the Services developed the joint Handbook for Habitat Conservation Planning and Incidental Take Permitting Process (HCP Handbook), which was made available for public review and comment on December 21, 1994 (59 FR 65782) and issued in final form on December 2, 1996 (61 FR 63854).

In just a few years, the HCP program has been transformed from a relatively little-used approach under the ESA to one of its most important and innovative conservation programs. For example, in the first ten years of the program, the Services issued only 14 incidental take permits. However, by September 30, 1998, the Services had issued 243 incidental take permits, and approximately 200 HCPs are currently under development.

The section 10 incidental take process provides the Services an opportunity to negotiate with and provide technical assistance to applicants as they develop HCPs. Also, it provides the flexibility the Services and applicants need to resolve issues between economic development and species conservation. The Services continue to learn from the HCP program which we believe has resulted in stronger HCPs that help ensure species conservation. Based on comments received from the public through a variety of ways (workshops, meetings, training sessions, scientific studies, participation in the development and implementation of HCPs, and during comment periods on various ESA regulations and policies) as well as deliberations within the Services, we announced, on February 17, 1998, our intention to provide a draft 5-point policy initiative for public review and comment. The 5-points addressed herein as the Draft Addendum are (1) biological goals and objectives, (2) adaptive management, (3) monitoring, (4) permit duration, and (5) public participation.

Addendum To the HCP Handbook

The Services intend to incorporate the 5-point policy initiative into the HCP Handbook as an addendum that will provide additional guidance on implementing the incidental take permit provisions of section 10(a)(1)(B) of the ESA. The five sections (or 5-points) of the Draft Addendum are contained entirely within this notice. Some of this guidance is derived from approaches we currently apply to the HCP process. In particular, we will use this guidance to establish overall biological goals for species covered by HCPs, to clarify and expand the use of adaptive management, monitoring, and to provide criteria to be considered by the Services in determining incidental take permit duration, and to expand the use of public participation. Nothing in this guidance is intended to supersede or alter any aspect of Federal law or regulation pertaining to the conservation of threatened or endangered species.

Biological Goals and Objectives

An approved incidental take permit and associated HCP authorizes incidental take of the covered species while meeting the issuance criteria in section 10(a)(2)(B) of the ESA. They ensure that the permittee will minimize and mitigate the effects of the authorized incidental take to the maximum extent practicable through an HCP's operating conservation program. An operating conservation program consists of the management activities undertaken when implementing an approved HCP to minimize and mitigate the effects of the activity on the covered species. The biological outcome of the operating conservation program for the covered species is the best measure of the success of an HCP. The best HCPs clearly define the desired outcome for the covered species and their habitats in terms of biological goals and objectives.

Although identifying biological goals and objectives was discussed in the HCP Handbook, the Services did not require HCPs to specifically identify biological goals and objectives. However, most HCPs had implied biological goals and objectives, and many recent HCPs include explicit biological goals and/or objectives. In the future, every HCP will include specific biological goals and objectives. Pursuant to the underlying

statutory and regulatory authorities, the Services will work with the applicant to derive the biological goals and objectives by examining the applicant's proposed action and the overall conservation needs of the covered species and/or its habitat.

Biological goals are the broad guiding principles for the operating conservation program; they are the rationale behind the minimization and mitigation strategies. Specific biological objectives are subsets of the biological goals and represent specific measurable targets for achieving the goals of the operating conservation program. Thus biological goals and objectives can be stated in a step-down approach based on the best scientific information available and reflect the conservation needs of the covered species. However, not all HCPs are likely to need complex, multi-tiered biological goals and objectives. The biological goals and objectives should be commensurate with the specific impacts and duration of the HCP applicant's proposed action. For example, low-effect HCPs generally have simple measurable biological objectives (e.g., preserving a minimum number of forage trees on the property) and include a relatively simple operating conservation program and monitoring protocol.

Determination of the biological goals and objectives is integral to the development of the operating conservation program. Conservation measures identified in an HCP, its accompanying incidental take permit, and/or IA provide the means for achieving the biological goals and objectives. For example, the overall biological goal could be to ensure population viability by maintaining habitat contiguity. The specific measurable objective to achieve this goal may be to conserve an adequate number of acres of habitat in a certain configuration, so that a viable corridor is maintained. The conservation measures could specify the number of acres and configuration. If the size and configuration were not determinable, an adaptive management strategy could be used, and the HCP, permit, and/or IA could list a series of incremental steps to be taken within an agreed upon range of management adjustments for determining and securing a viable corridor.

Available literature, State conservation strategies, candidate conservation plans, draft or final recovery plans or outlines, and other sources of relevant scientific and commercial information can serve as guides in setting biological goals and objectives. Species experts, State wildlife agencies, recovery teams, and/or scientific advisory committees may also help develop the biological goals and objectives. The biological goals and objectives may be either habitat or species based. More complex multispecies and/or regional HCPs may need an integration of habitat and species-specific goals and objectives. Although the goals and objectives may be stated in habitat terms, each covered species that falls under that goal or objective must be clearly specified. Regardless of the type of goal and objective used, the Services will ensure that the biological goals are consistent with conservation actions needed to adequately minimize and mitigate impacts to the covered species to the maximum extent practicable.

Explicit biological goals and measurable objectives provide clear guidance for both the applicant and the Service as to the purpose and direction of the HCP's operating conservation program. They create parameters and benchmarks for developing conservation measures, provide the rationale behind the HCP's terms and conditions, promote an effective monitoring program, and help determine the focus of an adaptive management strategy, if appropriate. The operating conservation program will include those measurable actions that, when implemented, are anticipated to meet the biological objectives. Implementing the operating conservation program is the extent of the permittee's obligation for meeting the biological goals and objectives.

Adaptive Management

Adaptive management strategies can assist the Services and the applicant in developing an adequate operating conservation program and improving its effectiveness. In the HCP program, adaptive management is used to examine alternative strategies for meeting measurable biological goals and objectives through research and/or monitoring, and then, if necessary, to adjust future conservation management actions according to what is learned.

Not all HCPs or all species covered in an incidental take permit need an adaptive management strategy. However, an adaptive management strategy is essential for permits that cover species that have significant biological data or information gaps that incur a significant risk to that species at the time the permit is issued. Possible significant data gaps that could lead to the development of an adaptive management strategy include, but are not limited to, significant biological uncertainty about specific information about the ecology of the species or its habitat (e.g., food preferences, relative importance of predators, territory size), habitat or species management techniques, or the degree of potential effects of the activity on the species covered in the incidental take permit. However, there may be some circumstances with such a high degree of uncertainty that a species should not receive coverage in an incidental take permit at all until additional research is conducted. If an adaptive management strategy is used, the approved HCP must outline the agreed upon future changes to the operating conservation program.

Habitat Conservation Plan assurances (No Surprises) and the use of adaptive management strategies are compatible. The assurances apply once all appropriate HCP provisions have been mutually crafted and agreed upon and approved by the Services and the applicant. Adaptive management strategies, if used, are part of those provisions, and their implementation becomes part of a properly implemented conservation plan. When an HCP, permit, and IA incorporate an adaptive management strategy, it should clearly state the agreed upon and warranted range of possible operating conservation program adjustments due to significant new information, risk, or uncertainty. During HCP negotiations, the Services and the applicant should determine the range of acceptable and anticipated management adjustments necessary to respond to new information after the permit is issued and describe this procedure in the HCP, permit, or IA. This process will enable the applicant to assess the potential economic impacts of adjustments before agreeing to the HCP.

Often, there is a direct relationship between the level of biological uncertainty for a covered species and the degree of risk that an incidental take permit could pose for that species. Therefore, the operating conservation program may need to be relatively cautious initially and adjusted later based on new information. A practical adaptive management strategy within the operating conservation program of a long-term incidental take permit will include milestones that are reviewed at scheduled intervals during the lifetime of the incidental take permit and permitted action. If there is a relatively high degree of risk, milestones and adjustments may need to occur early and often.

For an adaptive management strategy to be effective, it must be integrated into a monitoring program that is designed to ensure proper data collection and analysis that can guide appropriate adjustments in the operating conservation program. For example, a

habitat management objective may be defined as recruiting 95 percent large woody debris into streams to achieve the biological goal of maintaining properly functioning riparian habitat. The operating conservation program could include a range of possible buffers to achieve the biological objectives. The monitoring program would include measuring the amount of woody debris in streams. If the results from the monitoring program indicated that the 95-percent objective was not being achieved, then a change from one buffer to another might be warranted. However, the original agreed upon range of possible management adjustments, as identified in the HCP, incidental take permit, or IA, would need to have included the new buffer. The design of the adaptive management strategy and the monitoring program includes the type(s) of information needed and the triggers to institute changes in the width of the buffer.

If existing ecological data is insufficient to determine the method needed to achieve a biological objective, adaptive management strategies can be used to meet objectives by obtaining information on the species and its ecology through ongoing research, recovery planning, and conservation planning by Federal, State, and local agencies. For example, the Natomas Basin HCP in California has an adaptive management strategy that incorporates ongoing research. At this time, the U.S. Geological Survey's Biological Resources Division is conducting a study to determine the giant garter snake's population biology and habitat use. If additional information from the study suggests a different approach is appropriate to meet the conservation needs of the snake, the preserve location(s) could be modified and the habitat type emphasized in the restoration could be changed within the terms of the adaptive management strategy of the HCP's operating conservation program.

If the full range of effects of a proposed project is unknown at the time of HCP negotiation, a monitoring program combined with an adaptive management strategy could determine the actual extent of effects and then allow for agreed upon shifts in management strategies. A key element of adaptive management is to establish the information needs and link them to the management strategies and their objectives. For example, a study to determine the specific effects of grazing on a butterfly, based on a range of possible grazing pressures, could help establish a long-term management strategy. The HCP's adaptive management strategy could outline the potential range of grazing management regimes, but since the extent of the butterfly's tolerance of grazing may be initially unknown, the operating conservation program could start with a more cautious grazing regime and be subject to subsequent relaxation, if appropriate. The particular aspects of the grazing regime could subsequently shift or relax, depending on the results of the study.

Where specific methodologies (e.g., translocation) or strategies have not been thoroughly tested, an adaptive management strategy can investigate different management tools to determine the best approach. In Utah, the Washington County HCP includes a five-year desert tortoise translocation study. Translocation of desert tortoises from areas to be developed is an action to minimize, not mitigate, take of desert tortoises in the HCP. Depending on the recovery unit, translocation may prove to be a useful tool for desert tortoise recovery in the future. Healthy desert tortoises found within areas to be developed are translocated to designated areas. The effects of that translocation on the biology of the tortoises, including health status, weight gain, reproduction, and behavior, are being monitored. If the tortoises successfully adapt to the new location, then translocation may continue in an isolated and currently unoccupied portion of the HCP reserve area. Information gained on the efficacy of translocation as a management technique, and on habitat requirements of desert tortoises (vegetation, elevation, etc.) can subsequently be used to adjust management in this and other HCPs in the range of the species.

HCPs may be designed to provide flexibility other than through the use of adaptive management. The permittee or another responsible party may need the flexibility, under different circumstances, to employ alternative methods or strategies within the operating conservation program to achieve the biological goals and objectives. This flexibility also allows previously agreed upon management and/or mitigation actions to be implemented as needed in response to changed circumstances. The HCP, incidental take permit, and IA, if any, describes the range of management and/or mitigation actions and the process by which the management and funding decisions are made and implemented.

Monitoring

Monitoring is a mandatory element of all HCPs (See 50 CFR 17.22(b)(1), 17.32(b)(1), and 222.22). When properly designed and implemented, monitoring programs for HCPs should obtain the information necessary to assess compliance, project impacts, and to verify progress toward the agreed upon biological goals and objectives. Monitoring also provides the scientific data necessary to evaluate the success of the HCP's operating conservation programs with respect to the development of strategies in future HCPs or other programs that contribute to the conservation of species and their habitat. The HCP Handbook already provides guidance for developing monitoring measures (Chapter 3, section B.4.) and discusses reporting requirements (Chapter 6, section E.4.). The following information further clarifies and provides additional guidance for the monitoring component of an HCP, permit, and/or IA.

Scope of Monitoring

The Services and the applicant must ensure that the monitoring program provides information to: (1) evaluate compliance; (2) determine if biological goals and objectives are being met; and (3) provide feedback to an adaptive management strategy, if used. Biological objectives provide a framework for developing a monitoring program that measures progress toward meeting those biological objectives. If an HCP, permit, and/or IA has an adaptive management strategy, it is crucial to integrate the monitoring program into this strategy in order to guide any necessary changes in management.

When an applicant and the Services design a monitoring program, the scope of the monitoring measures should be commensurate with the scope and duration of the operating conservation program and project impacts. Some programs may be simple, while those for large-scale or regional planning efforts may be comprehensive and track more than one component of the HCP (e.g., habitat quality, collection of mitigation fees). The HCP, permit, and/or IA should also tier the monitoring program to reflect the structure of the biological goals and objectives. The following components are essential for most monitoring protocols (the size and scope of the HCP will dictate the actual level of detail in each item): (1) the implementation and effectiveness of the HCP terms and conditions (e.g., financial responsibilities and obligations, management responsibilities, and other aspects of the incidental take permit, HCP, and the IA, if applicable); (2) the level of incidental take of the covered species; (3) the biological conditions resulting from the operating conservation program (e.g.,

change in the species' status or a change in the habitat conditions); and (4) any informational needs of an adaptive management strategy, if utilized. An effective monitoring program is flexible enough to allow modifications, if necessary, to obtain the appropriate information.

In order to obtain meaningful information, the applicant and the Services should structure the monitoring methods and standards so that the results from one reporting period and area to another are comparable, and the monitoring protocol responds to the question(s) asked. Credible monitored units should reflect the biological objective's measurable units (e.g., if the biological objective is in terms of numbers of individuals, the monitoring program should measure the number of individuals). The monitoring program will be based on sound science and standard survey or other monitoring protocols previously established should be used. Although the specific methods used to gather necessary data may differ depending on the species and habitat types, monitoring programs should use a multispecies approach when appropriate.

HCP monitoring should consist of two types. The first is compliance monitoring, where the Services monitor the permittee's implementation of the requirements of the HCP, incidental take permit terms and conditions, and IA, if applicable. The second is effects and effectiveness monitoring where the permittee (or other designated entity) examines the impacts of the authorized incidental take (effects) and implementation of the operating conservation program to determine if the actions are producing the desired results (effectiveness). To monitor all aspects of an HCP effectively, and to ensure its ultimate success, the entire monitoring program should incorporate both types of monitoring. The monitoring program should also clearly designate who is responsible for the various aspects of monitoring.

Compliance Monitoring

Compliance monitoring is necessary for the Services to ensure that the permittee is meeting the terms and conditions of the HCP, its accompanying incidental take permit, and IA, if any. Therefore, the Services verify adherence to the terms and conditions of the incidental take permit, HCP, IA, and any other related agreements, and will ensure that incidental take of the covered species does not exceed the level authorized under the incidental take permit. FWS and NMFS regulations, 50 CFR 13.45 and 50 CFR 220.45, respectively, provide the authority for the Services to require annual compliance reports unless otherwise specified by the incidental take permit. Also, the Services will ensure that the reporting requirements are tailored to assist the Services with monitoring incidental take permit compliance (e.g., documentation of habitat acquisition, use of photographs). These reports help determine whether the permittee is properly implementing the terms and conditions of the HCP, its incidental take permit, and any IA, and will provide a long-term administrative record documenting progress made under the incidental take permit.

In addition to reviewing reports submitted by the permittee, it is important for the Services to make field visits to verify whether the report data are correct and the HCP is being implemented as negotiated. These visits allow the Services to check for information, identify unanticipated deficiencies or benefits, develop closer cooperative ties with the permittee, help prevent accidental violations of the incidental take permit's terms and conditions, and assist the permittee and Services in developing corrective actions when necessary.

The Services must track HCP implementation and the monitoring programs. The Services' National and Regional Offices will develop a database to track incidental take permit issuance and compliance. The following standard fields should be included in each database to maintain consistency throughout the Nation:

1. The permittee's name;
2. The incidental take permit number;
3. The incidental take permit duration;
4. The amount of authorized take;
5. The location of permitted action and mitigation;
6. The amount of area covered;
7. The species and habitat covered; and
8. The nature of the permitted activity.

Some suggested additional fields in the databases include:

1. A brief summary of the monitoring program;
2. The reporting frequency and the dates reports are due, received, and reviewed;
3. The nature and effect of the incidental take; and
4. A brief description of the status of the operating conservation program.

Individual Regional Offices may choose to expand the databases to add fields specific to the HCPs in their region, especially for tracking cumulative effects for future HCP analyses. For example, the database may also record and schedule periodic audits of the HCP and field visits. The databases should allow the Services to generate monthly and quarterly lists identifying the completion and due dates for operating conservation program or other HCP actions. This will help the Services initiate the required review and analysis needed for the monitoring program associated with each HCP.

For large-scale and/or regional HCPs, oversight committees, made up of representatives from significantly affected entities (e.g., State Fish and Wildlife agencies), are often used to ensure proper and periodic review of the monitoring program, and to ensure that each program complies with the terms and conditions of the incidental take permit. For example, the proponents of the Karner blue butterfly HCP in Wisconsin are proposing an auditing approach to insure incidental take permit compliance. The lead applicant, Wisconsin Department of Natural Resources, will initially conduct annual on-site audits of each partner. FWS will audit the Wisconsin Department of Natural Resources in a similar fashion. In addition, FWS will accompany the Wisconsin Department of Natural Resources on the partner audits as appropriate to understand partner compliance levels. Over time, Wisconsin Department of Natural Resources will conduct the audits less frequently, if performance levels are acceptable. Each partner will provide an annual monitoring report and will submit these along with their audit report to FWS annually.

Oversight committees should periodically evaluate the permittee's compliance with the HCP, its incidental take permit, and IA, and the success of the operating conservation program in reaching its identified biological goals and objectives. Such committees usually include species experts and representatives of the permittee, the Service, and other affected agencies and entities. It may also be beneficial to submit the committee's findings to recognized experts in pertinent fields (e.g., conservation biologists, restoration specialists, etc.) for review or to have technical experts conduct field investigations to assess implementation of the terms and conditions. Because the formation of these committees may be subject to the Federal Advisory Committee Act (FACA), the role of the participants and the purpose of the meetings must be clearly identified. FACA requirements will be adhered to,

where appropriate. Oversight committees should meet at least annually and review implementation of the monitoring program and filing of reports as defined in the HCP, permit, and/or IA.

Monitoring the Effects and Effectiveness of the HCP

Effects and effectiveness monitoring determine if the anticipated impacts from the permitted project are occurring (effects) and progress toward the biological goals and objectives of the HCP (e.g., if the conservation strategies are producing the desired habitat conditions or population numbers) (effectiveness). The Services should incorporate provisions for monitoring the effects and effectiveness of the HCP during HCP development. Effects and effectiveness monitoring may also involve assessing threats and population trends of the covered species as it relates to the permitted activities, as well as monitoring the development of targeted habitat conditions. The Services should strive to collect information that will help detect cumulative trends in covered species populations or changes in the quality and/or quantity of the habitat (e.g., restoration of the streamside riparian area).

Monitoring programs will vary based on whether they are for low-effect or for regional, multispecies HCPs; however, the general elements of each program are similar. Post-activity or post-construction monitoring, along with a single report at the end of the monitoring period, will often satisfy the monitoring requirements for low-effect HCPs. For other HCPs, monitoring programs will be more comprehensive and may include milestones, timelines, and/or trigger points for change. Effects and effectiveness monitoring will generally include, but are not limited to, the following:

1. Periodic accounting of authorized incidental take;
2. Surveys to determine species status, appropriately measured for the particular operating conservation program (e.g., presence, density, or reproductive rates);
3. Assessments of habitat condition;
4. Progress reports on fulfillment of the operating conservation program (e.g., habitat acres acquired and/or restored); and
5. Evaluations of the operating conservation program and its progress toward its intended biological goals.

The Services and the HCP permittee cooperatively develop the effects and effectiveness monitoring program and determine responsibility for its various components. In multi-party HCPs, different parties may monitor different aspects of the HCP. The Services must periodically review any monitoring program to confirm that it is conducted according to their standards.

Monitoring Reports

The Services will streamline the reporting requirements for monitoring program by requesting all reports in a single document. The HCP, permit, or IA should specifically state the level of detail and quantification needed in the monitoring report and tailor report due dates to the activities conducted under the incidental take permit (e.g., due at the end of a particular stage of the project or the anniversary date of incidental take permit issuance). Most monitoring programs require reports annually, usually due on the anniversary date of incidental take permit issuance. Wherever possible, the Services will coordinate the due dates with other reporting requirements (e.g., State reports) so the permittee can satisfy more than one reporting requirement with a single report. The following represents the minimum information frequently needed in a monitoring program and its reports:

1. Objectives for the monitoring program;
2. Effects on the covered species and/or habitat;
3. Location of sampling sites;
4. Methods for data collection and variables measured;
5. Frequency, timing, and duration of sampling for the variables;
6. Description of the data analysis and who conducted the analyses; and
7. Evaluation of progress toward achieving measurable biological goals and objectives and other terms and conditions as required by the incidental take permit and/or IA.

These elements may be simplified for periods of no activity or low-effect HCPs. If a required report is not submitted by the date specified in the HCP or incidental take permit terms and conditions, or is inadequate, the Services will notify the permittee. The Services have discretion to offer the permittee an extension of time to demonstrate compliance. The Services have examined this reporting guidance under the Paperwork Reduction Act of 1995 and found that it does not contain requests for additional information or an increase in the collection requirements other than those already approved for incidental take permits (OMB approval for FWS #1018–0094; for NMFS # 0648–0230).

Funding Monitoring Programs

The ESA and the section 10 regulations require that HCPs specify the measures the permittee will adopt to ensure adequate funding for the HCP. An HCP that does not contain an adequate funding commitment from the applicant/permittee to support an acceptable monitoring program should not be approved unless the HCP establishes alternative funding mechanisms. The Services and the applicant should work together to develop the monitoring program, and determine who will be responsible for monitoring the various components of the HCP. Specific monitoring tasks may be assigned to entities other than the permittee (e.g., State or Tribal agencies) as long as the Services and parties responsible for implementing the HCP approve of the monitoring assignment. The terms of the HCP, incidental take permit, and IA may contain funding mechanisms that provide for a public (e.g., local, State, or Federal) or a private entity to conduct all or portions of the monitoring. This funding mechanism must be agreed upon by the Services and the parties responsible for implementing the HCP.

Permit Duration

Both FWS and NMFS regulations for incidental take permits outline factors to consider when determining incidental take permit duration (50 CFR 17.32 and 222.22). These factors include duration of the applicant's proposed activities and the expected positive and negative effects on covered species associated with the proposed duration including the extent to which the operating conservation program will increase the survivability of the listed species and/or enhance its habitat. In determining the duration of an incidental take permit, the Services will also consider the extent of scientific and commercial data underlying the proposed operating conservation program for the HCP, the length of time necessary to implement and achieve the benefits of the operating conservation program, and the extent to which the program incorporates adaptive management strategies.

To date, the Services have issued more than 200 incidental take permits, varying in duration from one to 99 years. The average duration of incidental take permits issued is 25 years; pending applications for incidental take permits currently have an average requested duration of 30 years. The Services allow a range in incidental take permit duration to account for both the varying biological impacts resulting from the proposed

activity (e.g., variations in the length of timber rotations and treatments versus a real estate subdivision build out), and the nature or scope of the permitted activity and operating conservation program addressed in the HCP, permit, and/or IA (e.g., housing or commercial developments versus long-term sustainable forestry; conservation easements). Though not always applicable, small-scale HCPs are likely to have short-term incidental take permits, whereas large-scale HCPs are likely to have longer term incidental take permits because of the time required to implement their operating conservation program and the permittee's need for long-term assurances. Longer permits may also ensure long-term commitments to the operating conservation program.

Public Participation

The Services intend to expand public participation in the HCP process to provide greater opportunity for the public to assess, review, and analyze HCPs and associated documents (e.g., National Environmental Policy Act (NEPA) documents). As stated in the HCP Handbook in Chapter 6.B, the Services currently require a minimum 30-day public comment period for all HCP applications. However, the Services recognize the concern of the public regarding an inadequate time for the public comment period, especially for large-scale HCPs. Therefore, the Services propose to expand the current comment period to provide a 60-day public comment period for most HCPs. The exceptions to a 60-day comment period would be those for low-effect HCPs and large scale regional, or exceptionally complex HCPs. The Services believe the current 30-day public comment period provides enough time to review low-effect HCPs, which have a categorical exclusion from NEPA.

For large-scale, regional, or exceptionally complex HCPs, the Services intend to expand the use of informational meetings and/or advisory committees. In addition, the minimum comment period for these HCPs is proposed to be 90 days, unless significant public participation occurs during HCP development. With the extension of the public comment periods, the recommended timeline targets for processing incidental take permits are extended accordingly: The timeline to complete low effect HCPs will remain up to three months; HCPs with an Environmental Assessment (EA) will be four to six months; and HCPs with a 90-day comment period and/or an Environmental Impact Statement (EIS) may be up to 12 months.

During the public comment period, any member of the public may review and comment on the HCP and the accompanying NEPA document, if applicable. If an EIS is required, the public can also participate during the scoping process. When practicable, the Services will seek to announce the availability of HCPs in electronic format and in local newspapers of general circulation. The Services will encourage potential applicants to allow for public participation during the development of an HCP, particularly if non-Federal public agencies (e.g., State Fish and Wildlife agencies) are involved. Although the development of an HCP is the applicant's responsibility, the Services will encourage applicants for most large-scale, regional HCP efforts to provide extensive opportunities for public involvement during the planning and implementation process.

The Services recommend that applicants include Native American tribes during the development of the HCP if tribal resources may be affected. If an applicant chooses not to consult with Tribes, the Services, under the Secretarial Order on Federal-Tribal trust responsibilities and ESA, will consult with the affected Tribes to evaluate the effects of the proposed HCP on Tribal trust resources and will provide the information resulting from such consultation to the HCP applicant prior to the submission of the draft HCP for public comment, and will advocate the incorporation of measures that will restore or enhance Tribal trust resources. After consultation with the tribes and the non-federal landowner and after careful consideration of the tribe's concerns, the Services will clearly state the rationale for the recommended final decision and explain how the decision relates to the Services' trust responsibility.

Public Comments Solicited

The Services will issue a final Addendum to the HCP Handbook based upon consideration of information and recommendations received from all interested parties. Therefore, the Services are soliciting comments, recommendations, or suggestions from the public, other concerned government agencies, the scientific community, industry, or any other interested party about this Draft Addendum.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 2, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

Dated: January 28, 1999.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

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BILLING CODE 4310–55–P; 3510–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Child Welfare Act; Receipt of Designated Tribal Agents for Service of Notice

AGENCY: Bureau of Indians Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The regulations implementing the Indian Child Welfare Act provide that Indian tribes may designate an agent other than the tribal chairman for service of notice proceedings under the Act, 25 CFR 23.12. The Secretary of the Interior shall publish in the **Federal Register** on an annual basis the names and addresses of the designated agents.

This is the current list of Designated Tribal Agents for service of notice, and includes the listings of designated tribal agents received by the Secretary of the Interior prior to the date of this publication.

ADDRESSES: Bureau of Indian Affairs, Division of Social Services, 1849 C Street, NW, MS–4603–MIB, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Edie Adams, Child Welfare Specialist, Division of Social Services, (202) 208–2536.

Indian Child Welfare Designated Agents

Aberdeen Area

Ida Ashes, ICWA Director, Yankton Sioux Tribe, P.O. Box 248, Marty, SD 57361; (605) 384–3641 Fax: (605) 384–5687

Rose Chasing Hawk-Dubray, ICWA Director, Rosebud Sioux Tribe, Child & Family Services, P.O. Box 430, Rosebud, SD 57570; (605) 747–2258 Fax: (605) 747–5096

Janet Collins, ICWA Director, Cheyenne River Sioux Tribe, P.O. Box 590, Eagle Butte, SD 57625; (605) 964–6460 Fax: (605) 964–1200

Caroline Cuny, ICWA Administrator, Oglala Sioux Tribe—Ontrac, P.O. Box 148, Pine Ridge, SD 57770; (605) 867–5805 Fax: (605) 867–1893

Janet Gunderson, ICWA Director, Three Affiliated Tribes, HC 3, Box 2, New Town, ND 58763; (701) 627–3731 Fax: (701) 627–4225

Celeste Honomichl, ICWA Specialist, Winnebago Tribe of Nebraska, Human Services Department, P.O. Box 723, Winnebago, NE 68071; (402) 878–2379 Fax: (402) 878–2228
Rhonda Horse, ICWA Director, Ponca Tribe of Nebraska, 1310 Norfolk Avenue Suite B, Norfolk, NE 68701; (402) 371–5233 Fax: (402) 371–7564
Rose McCauley, ICWA Director, Lower Brule Sioux Tribe, P.O. Box 187, Lower Brule, SD 57548; (605) 473–5528 Fax: (605) 473–061
Pierre Merrick, ICWA Director, Omaha Tribe of Nebraska, Child Protection Services, P.O. Box 426, Macy, NE 68039; (402) 837–5287 Fax: (402) 837–5275
Frank Myrick, ICWA Director, Spirit Lake Tribal Social Services, P.O. Box 356, Fort Totten, ND 58335; (701) 766–4855 Fax: (701) 766–4273
Linda One Father, ICWA Administrator, Flandreau Santee Sioux Tribe, P.O. Box 283, Flandreau, SD 57028; (605) 997–3844 Fax: (605) 997–3694
Evelyn Pilcher, ICWA Director, Sisseton-Wahpeton Sioux Tribe, P.O. Box 509, Agency Village, SD 67262; (605) 698–3992 Fax: (605) 698–3999
Marilyn Poitra, ICWA Coordinator, Turtle Mtn. Band of Chippewa Indians, Child Welfare and Family Services, P.O. Box 900, Belcourt, ND 58316; (701) 477–5688 Fax: (701) 477–5797
Pattie Ross, ICWA Director, Red Horse Lodge, Crow Creek Sioux Tribe, P.O. Box 49, Fort Thompson, SD 57339; (605) 245–2322 Fax: (605) 245–2205
Mary Rousseau, ICWA Agent, Standing Rock Sioux Tribe, Child Welfare/Social Services, P.O. Box 400, Fort Yates, ND; (701) 854–3431 Fax: (701) 854–2119
Don Whipple, ICWA Child Advocate, Santee Sioux Tribe of Nebraska, Dakota Tiwahe Social Services Prog., Route 2, Box 193, Niobrara, NE 68760; (402) 857–2342 Fax: (402) 857–2361

Albuquerque Area

The Honorable Jim James, Chief Judge, Jicarilla Apache Tribal Court, P.O. Box 221, Dulce, New Mexico 87528; (505) 759–3366
Social Services Director, Pueblo of Laguna, P.O. Box 194, Laguna, New Mexico 87026; (505) 552–9712/13
Tribal Census Clerk, Mescalero Apache Tribe, P.O. Box 227, Mescalero, New Mexico 88340; (505) 671–4494 Ext. 209
Nikki Rhea, ICWA Coordinator, Pueblo of Nambe, Route 1, Box 117–BB, Nambe Pueblo, New Mexico 87501; (505) 455–2036
Debbie Shemayme, ICWA Coordinator, Pueblo of Picuris, P.O. Box 127, Penasco, New Mexico 87553; (505) 587–1071
Edna Cervantes, ICWA Coordinator, Pueblo of Pojoaque, Route 11, Box 71, Santa Fe, New Mexico 87501; (505) 455–0935
Pauline Cata, ICWA Coordinator, Pueblo of San Ildefonso, Route 5, Box 315–A, Santa Fe, New Mexico 87501; (505) 455–2273
Jackie Calabaza, Johnny Abeyta, ICWA Coordinators, Pueblo of San Juan, P.O. Box 1099, San Juan Pueblo, New Mexico 87566; (505) 852–2588/(505) 747–1908
Margaret Atkinson, ICWA Coordinator, Pueblo of Santa Clara, P.O. Box 580, Espanola, New Mexico 87532; (505) 753–7326/7316
Linda Lavorgna, ICWA Coordinator, Pueblo of Taos, P.O. Box 1846, Taos, New Mexico 87571; (505) 758–7824
Gil Vigil, ICWA Coordinator, Pueblo of Tesuque, Route 5, Box 360–T, Santa Fe, New Mexico 87501; (505) 983–2667
Betty Nez, Director of Social Services, Ramah Navajo School Board, Inc., P.O. Box 250, Pine Hill, New Mexico 87357; (505) 775–3221
Social Services Department, Attn: ICWA Worker, Pueblo of Acoma, P.O. Box 436, Acoma, New Mexico 87034; (505) 552–5154/5155
Pueblo of Cochiti—(No Response)
Caroline Dailey, Director of Social Services, Pueblo of Isleta, P.O. Box 1270, Isleta, New Mexico 87022; (505) 869–2772
Helen Gachupin, Social Services Program, Pueblo of Jemez, P.O. Box 100, Jemez Pueblo, New Mexico 87024; (505) 834–7117
Governor Robert Velasquez, Lt. Governor Sam Candelaria, Pueblo of San Felipe, P.O. Box 4339 San Felipe Pueblo, New Mexico 87001; (505) 867–3381
And
Bruce Garcia, Director, Comprehensive Community Care Services, Title II—Indian Child Welfare Act, P.O. Box 4350, San Felipe Pueblo, New Mexico 87001; (505) 867–9740
Governor Alex Lujan, Attn: Social Services Department, Pueblo of Sandia, P.O. Box 6008, Bernalillo, New Mexico 87004; (505) 867–4696
Pueblo of Santa Ana—(No Response)
Dr. Mary J. Tenorio, ICWA Program, Pueblo of Santo Domingo, P.O. Box 129, Santo Domingo Pueblo, New Mexico 87052; (505) 465–0630
Vince Munoz, Tribal Governor/Administrator, Ysleta del Sur Pueblo, 119 S. Old Pueblo Road, P.O. Box 17579, El Paso, Texas 79917; (915) 859–7913 Ext. 151
And
Ignacio Rios, Jr., Social Services Administrator, Ysleta del Sur Pueblo, 119 S. Old Pueblo Road, P.O. Box 17579, El Paso, Texas 79917; (915) 859–7913 Ext. 111
Pueblo of Zia—(No Response)
Dedra Millich, Director of Social Services, Southern Ute Indian Tribe, P.O. Box 737, Ignacio, Colorado 81137; (970) 563–0100 Ext. 2328
Social Services Director, Ute Mountain Ute Tribe (Colorado & Utah), General Delivery, Towaoc, Colorado 81334; (303) 565–3751 Ext. 265
Social Services Director, Pueblo of Zuni, P.O. Box 339, Zuni, New Mexico 87327; (505) 782–4481 Ext. 141

Anadarko Area

Area Social Worker, P.O. Box 368, WCD Office Complex, Anadarko, Oklahoma 73005; (405) 247–6673 Ext. 257
Absentee-Shawnee Tribe of Oklahoma Indians, Governor, 2025 S. Gordon Cooper Drive, Shawnee, Oklahoma 74801; (405) 275–4030
Alabama-Coushatta Tribe of Texas, Chairperson, Route 3, Box 640, Livingston, Texas 77351; (409) 563–4391
Apache Tribe of Oklahoma, Chairman, P.O. Box 1220, Anadarko, Oklahoma 73005; (405) 247–9493
Caddo Indian Tribe of Oklahoma, Chairman, P.O. Box 487, Binger, Oklahoma 73009; (405) 656–2344
Cheyenne-Arapaho Tribes of Oklahoma, Chairman, P.O. Box 38, Concho, Oklahoma 73022; (405) 262–0345
Citizen Potawatomi Nation, Chairman, 1901 S. Gordon Cooper Drive, Shawnee, Oklahoma 74801; (405) 275–3121
Comanche Indian Tribe of Oklahoma, Chairman, HC 32, Box 1720, Lawton, Oklahoma 73502; (580) 492–4988
Delaware Tribe of Western Oklahoma, President, P.O. Box 825, Anadarko, Oklahoma 73005; (405) 247–2448
Fort Sill Apache Tribe of Oklahoma, Chairperson, Route 2, Box 121, Apache, Oklahoma 73006; (580) 588–2298
Iowa Tribe of Kansas, Chairman, Route 1, Box 58A, White Cloud, Kansas 66094; (785) 595–3258
Iowa Tribe of Oklahoma, Chairman, Route 1, Box 721, Perkins, Oklahoma 74059; (405) 547–2401
Kaw Nation, Chairperson, Drawer 50, Kaw City, Oklahoma 74641; (580) 269–2552
Kickapoo Tribe of Indians of The Kickapoo Reservation in Kansas, Chairman, P.O. Box 271, Horton, Kansas 66439; (785) 486–2131
Kickapoo Traditional Tribe of Texas, Chairman, HC 1, Box 9700, Eagle Pass, Texas 78852; (830) 773–2105
Kickapoo Tribe of Oklahoma, Chairman, P.O. Box 70, McCloud, Oklahoma 74851; (405) 964–2075
Kiowa Indian Tribe of Oklahoma, Chairman, P.O. Box 369, Carnegie, Oklahoma 73015; (580) 654–2300
Otoe-Missouria Tribe of Oklahoma, Chairman, Route 1, Box 62, Red Rock, Oklahoma; (580) 723–4466
Pawnee Indian Tribe of Oklahoma, President, P.O. Box 470, Pawnee, Oklahoma 74058; (918) 762–3621
Ponca Tribe of Indians of Oklahoma, Chairman, P.O. Box 2, White Eagle, Ponca City, Oklahoma 74601; (580) 762–8104
Prairie Band of Potawatomi Indians of Kansas, Chairperson, 14880 K. Road, Mayetta, Kansas 66509; (785) 966–2255
Sac and Fox of Missouri in Kansas, Chairman, Route 1, Box 60, Reserve, Kansas 66434; (785) 742–7471
Sac and Fox Nation of Oklahoma, Principal Chief, Route 2, Box 246, Stroud, Oklahoma 74079; (918) 968–3526
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Director, Tribal Social Services, Crow Tribe, P.O. Box 159, Crow Agency, Montana 59022; (406) 638–2606 Fax: (406) 638–2448
Joseph McConnell, President, Fort Belknap Community Council, Rural Route 1, Box

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Director, Indian Child Welfare Act Program, Assiniboine and Sioux Tribes of the Fort Peck Reservation of Montana, P.O. Box 589, Poplar, Montana 59255; (406) 768–3330 Fax: (406) 768–3344

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Director, Tribal Social Services, Northern Cheyenne Tribe, P.O. Box 128, Lame Deer, Montana 59043; (406) 477–8321 Fax: (406) 477–8333

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Social Services Director, Mississippi Band of Choctaw Indians, P.O. Box 6010—Choctaw Branch, Philadelphia, Mississippi 39350; (601) 650–1741

Social Services Director, Coushatta Tribe of Louisiana, P.O. Box 790, Elton, Louisiana; (318) 584–1435

Family Support Services, Eastern Band of Cherokee Indians, Qualla Boundary, P.O. Box 507, Cherokee, North Carolina 28719; (704) 497–2771

Tribal Chief, Houlton Band of Maliseet Indians, Route 3, Box 450, Houlton, Maine 04730; (207) 532–4273

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Chairman, Miccosukee Tribe, P.O. Box 440021, Tamiami Station, Miami, Florida 33144; (305) 223–8380

Chief Sachem, Narrangansett Indian Tribe, P.O. Box 268, Charlestown, Rhode Island 02813; (401) 364–1100

Nation Representative, Oneida Indian Nation, P.O. Box 1, Vernon, New York 13476; (315) 829–3090

Head Chief, Onondaga Nation of New York, RRI, Box 270A, Nedrow, New York 13120; (315) 492–4210

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Governor, Passamaquoddy Tribe of Maine, Pleasant Point Reservation, P.O. Box 343, Perry, Maine 04667; (207) 853–2600

Governor, Penobscot Indian Nation of Maine, Community Building—Indian Island, Old Town, Maine 04468; (207) 827–7776

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Executive Director, Native Village of Point Hope, P.O. Box 109, Point Hope, AK 99766; (907) 368–2330 Fax: (907) 368–2332

Tribal Family Youth Specialist, Ruby Tribal Council, P.O. Box 117, Ruby, AK 99768–0117; (907) 468–4400 Fax: (907) 468–4474

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Family Services Tribal Specialist, Kawerak, Inc., P.O. Box 948, Nome, AK 99762; (907) 443–4376 (907) 443–3543

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Native Village of Kalskag, Kuskokwim Native Association, ICWA Coordinator, P.O. Box 127, Aniak, AK 99557; (907) 675–4384

Nenana Native Association, Tanana Chiefs Conference, Inc., Director Human Services, 122 First Avenue, Suite 600, Fairbanks, AK 99701; (907) 452–8251

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Human Service Director, Douglas Indian Association, P.O. Box 240541, Douglas, AK 99824; (907) 364–2916 Fax: (907) 364–2917

Native Village of Kwigillingok, Family Services Specialist, P.O. Box 49, Kwigillingok, AK 99622–0049; (907) 588–8114 Fax: (907) 588–8429

General Manager, Noorvik Native Community, P.O. Box 71, Noorvik, AK 99763–0071; (907) 636–2144 Fax: (907) 636–2202

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Native Village of Akutan, Aleutian/Pribilof Islands Assoc., ICWA Coordinator, 401 E. Fireweed Ln., Suite 201, Anchorage, AK 99503; (907) 276–2700

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ICWA Coordinator, Native Village of Kasigluk, P.O. Box 19, Kasigluk, AK 99609–0019; (907) 477–6927
ICWA Coordinator, Kenaitze Indian Tribe, P.O. Box 988, Kenai, AK 99611–0988; (907) 283–3633 Fax: (907) 283–3052
ICWA Coordinator, Ketchikan Indian Corporation, 429 Deermont Avenue, Ketchikan, AK 99901; (907) 225–5158 Fax: (907) 247–0429
ICWA Coordinator, Emmonak Village, P.O. Box 126, Emmonak, AK 99581–0126; (907) 949–1720 Fax: (907) 949–1384
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Native Village of False Pass, Aleutian/Pribilof Islands, ICWA Coordinator, 401 E. Fireweed Ln., Suite 201, Anchorage, AK 99503; (907) 276–2700
ICWA Coordinator, Native Village of Fort Yukon, P.O. Box 126, Fort Yukon, AK 99740–0126; (907) 662–2581 Fax: (907) 662–2222
Native Village of Gakona, Copper River Native Assoc., ICWA Coordinator, Drawer H, Copper Center, AK 99573; (907) 822–5241
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ICWA Coordinator, Native Village of Gambell, P.O. Box 90, Gambell, AK 99742; (907) 985–5346 Fax: (907) 985–5220
Native Village of Georgetown, Association of Village Council Presidents, ICWA Coordinator, P.O. Box 219, Bethel, AK 99559
Organized Village of Grayling, Tanana Chiefs Conference, Inc., Director Human Services, 122 First Avenue, Suite 600, Fairbanks, AK 99701; (907) 452–8251
ICWA Coordinator, Gulkana Village, P.O. Box 254, Gakona, AK 99586–0254; (907) 822–3746 Fax: (907) 822–3976
Native Village of Hamilton, Association of Village Council Presidents, ICWA Coordinator, P.O. Box 219, Bethel, AK 99559
Healy Lake Village, Tanana Chiefs Conference, Inc., Director Human Services, 122 First Avenue, Suite 600, Fairbanks, AK 99701; (907) 452–8251
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ICWA Coordinator, Hoonah Indian Association, P.O. Box 602, Hoonah, AK 99829–0602; (907) 945–3545 Fax: (907) 945–3703
ICWA Coordinator, Native Village of Hooper Bay, P.O. Box 2193, Hooper Bay, AK 99604–2193; (907) 758–4915 Fax: (907) 758–4815
Hughes Village, Tanana Chiefs Conference, Inc., Director Human Services, 122 First Avenue, Suite 600, Fairbanks, AK 99701; (907) 452–8251
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Human Services Director, Hydaburg Cooperative Association, P.O. Box 305, Hydaburg, AK 99922–0305; (907) 285–3470
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ICWA Coordinator, Village of Iliamna, P.O. Box 286, Iliamna, AK 99606–0286; (907) 571–1246 Fax: (907) 571–1256
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Village of Birch Creek, Village of Tanana Chiefs Conference, Inc., Director Human Services, 122 First Avenue, Suite 600, Fairbanks, AK 99701; (907) 452–8251
ICWA Coordinator, Native Village of Buckland, P.O. Box 67, Buckland, AK 99727–0067; (907) 494–2171 (907) 494–2217
Native Village of Cantwell, Cooper River Native Assoc., ICWA Coordinator, Drawer H, Copper Center, AK 99574; (907) 822–5241
Native Village of Chenega, Chugachmiut, Inc., ICWA Specialist, 4201 Tudor Centre Drive, #210, Anchorage, AK 99508; (907) 562–4155
Native Village of Chuloonawick, Association of Village Council Presidents, ICWA Coordinator, P.O. Box 219, Bethel, AK 99559; (907) 543–3521
ICWA Coordinator, Village of Chefornak, P.O. Box 110, Chefornak, AK 99561–0110; (907) 869–8850 Fax: (907) 867–8711
ICWA Coordinator, Native Village of Chickaloon, P.O. Box 1105, Chickaloon, AK 99674–1105; (907) 746–0707 Fax: (907) 746–5433
Native Village of Chignik, Bristol Bay Native Association, ICWA Social Worker, P.O. Box 310, Dillinghan, AK 99576; (907) 842–4139
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ICWA Coordinator, Native Village of Chistochina, P.O. Box 241, Gakona, AK 99586–0241; (907) 822–3503 Fax: (907) 822–5179
ICWA Coordinator, Native Village of Chitina, P.O. Box 31, Chitina, AK 99566–0031; (907) 823–2215

ICWA Coordinator, Native Village of Chuathbaluk (Russian Mission), P.O. Box CHU, Chuathbaluk, AK 99557; (907) 465–4313 Fax: (907) 465–4113
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ICWA Coordinator, Native Village of Deering, P.O. 36089, Deering, AK 99736–0089; (907) 363–2138 Fax: (907) 363–2195
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ICWA Coordinator, Village of Dot Lake, P.O. Box 2275, Dot Lake, AK 99737–2275; (907) 883–4227 Fax: (907) 883–4223
Native Village of Eagle, Tanana Chiefs Conference, Inc., Director Human Services, 122 First Avenue, Suite 600, Fairbanks, AK 99701; (907) 452–8251
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Native Village of Ekuk, Bristol Bay Native Assoc., ICWA Social Worker, P.O. Box 310, Dillingham, AK 99576; (907) 842–4139
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Northway Village, Tanana Chiefs Conference, Inc., Director Human Services, 122 First Avenue, Suite 600, Fairbanks, AK 99701; (907) 452–8251
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Native Village of Stevens, ICWA Coordinator, PO Box 61593, Stevens Village, AK 99774–1593
Native Village of Tanacross, United Crow Band, Inc., ICWA Coordinator, P.O. Box 131, Tok, AK 99780; (907) 883–5137
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Naknek Native Village, Bristol Bay Native Association, ICWA Coordinator, P.O. Box 310, Dillingham, AK 99576; (907) 842–4139
Native Village of Nanwalek, Chugachmiut, Inc., ICWA Coordinator, 4201 Tudor Centre Drive, Suite 210, Anchorage, AK 99508; (907) 562–4155
Native Village of Napaimute, Association of Village Council Presidents, ICWA Coordinator, P.O. Box 219, Bethel, AK 99559; (907) 543–3596
Agdaagux Tribe of King Cove, Aleutian/Pribilof Islands Assoc., ICWA Coordinator, 401 E. Fireweed Ln., Suite 201, Anchorage, AK 99503; (907) 276–2700
Native Village of Nightmute, United Villages, Inc., ICWA Specialist, P.O. Box 37148, Tooksook Bay, AK 99637; (907) 427–7827
Native Village of Point Lay, Arctic Slope Native Association, Limited, ICWA Coordinator, P.O. Box 1232, Barrow, AK 99723; (907) 852–2762
Village of Wainwright, Arctic Slope Native Association, Limited, ICWA Coordinator, P.O. Box 1232, Barrow, AK 99723; (907) 852–2762
Kaktovik Village, Arctic Slope Native Association, Limited, ICWA Coordinator, P.O. Box 1232 Barrow, AK 99723; (907) 852–2762
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ICWA Coordinator, Pilot Station Traditional Village, P.O. Box 5119, Pilot Station, AK 99650–5119; (907) 549–3373 Fax (907) 549–3301
ICWA Coordinator, Native Village of Tununak, P.O. Box 77, Tununak, AK 99681–0077; (907) 652–6527 Fax: (907) 652–6011
ICWA Coordinator, Village of Stony River, P.O. Box SRV, Stony River, AK 99557–0000; (907) 537–3238 Fax: (907) 537–3210
ICWA Coordinator, Native Village of Chevak, P.O. Box 140, Chevak, AK 99563–0140; (907) 858–7252 Fax: (907) 858–7812
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ICWA Coordinator, Native Village of Goodnews Bay, P.O. Box 50, Goodnews Bay, AK 99589–0050; (907) 967–8929 Fax: (907) 967–8330
ICWA Coordinator, Native Village of Eek, P.O. Box 63, Eek, AK 99578–0063; (907) 536–5572 Fax: (907) 536–5711
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Petersburg Indian Association, Central Council Tlingit & Haida Indian Tribes, ICWA Coordinator, 320 W. Willoughby Ave., Suite 300, Juneau, AK 99801; (907) 586–1432
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Native Village of Pitka's Point, Kuigpaimut, Inc., ICWA Coordinator, P.O. Box 32209, Mountain Villagek, AK 99632; (907) 591–2834
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Portage Creek Village, Bristol Bay Native Association, ICWA Coordinator, P.O. Box 310, Dillingham, AK 99576; (907) 842–5257
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Muskogee Area

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Chief, Peoria Tribe of Oklahoma, P.O. Box 1527, Miami, OK 74355; (918) 540–2535
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Navajo Area

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Phoenix Area

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Chairman, Battle Mountain Band, 37 Mountain View Drive, #1040–13, Battle Mountain, Nevada 89820; (702) 635–2004.
Chairperson, Chemehuevi Indian Tribe of California, P.O. Box 1976, Havasu Lake, California 92362; (760) 858–4301
Chairperson, Cocopah Tribe of Arizona, County 15th Avenue & Bin G, Somerton, Arizona 85350 (520) 627–2102
Chairman, Colorado River Tribes of the Colorado River Indian Reservation (Arizona and California), Route 1, Box 23–B, Parker, Arizona 85344; (520) 669–9211
Chairman, Confederated Tribes of the Goshute Reservation (Nevada and Utah), P.O. Box 6104, Ibapah, Utah 84034; (801) 234–1136
Chairman, Duckwater Shoshone Tribe of the Duckwater Reservation (Nevada), P.O. Box 140068 Duckwater, Nevada 89314; (702) 863–0227
Chairman, Elko Band, 511 Sunset Street, Elko, Nevada 89801; (702) 738–8889
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Chairperson, White Mountain Apache Tribe, P.O. Box 700, Whiteriver, Arizona 85941; (520) 338–4346
Chairman, Winnemucca Indian Colony of Nevada, P.O. Box 1370, Winnemucca, Nevada 89446
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Portland Area

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Vickie Doyle, ICWA, Port Gamble Indian Community, 31912 Little Boston Road, NE, Kingston, WA 98346; (360) 297–7623 Fax: (360) 297–4452
Sandy Reyes, ICWA, Puyallup Tribe, 2002 East 28th Street, Tacoma, WA 98404; (253) 573–7827 Fax: (253) 272–9514
Margret Ward, Quileute Tribal Council, P.O. Box 279, LaPush, WA 98350–0279; (360) 374–4325 Fax: (360) 374–6311
Clara Hall, Quinault Indian Nation Business Committee, P.O. Box 189, Taholah, WA 98587–0189; (360) 273–8211 Ext 240 Fax (360) 267–6778
Chairman, Samish Indian Tribe of Washington, P.O. Box 217, Anacortes, WA 98221; (360) 293–6404 Fax: (360) 299–0790
Dana Trailor, ICWA, Sauk-Suiattle Indian Tribe of Washington, 5318 Chief Brown Lane, Darrington, WA 98241; (360) 436–1900 Fax: (360) 436–0242
Lorrain Anderson (Liwac), Shoalwater Bay Tribal Council, P.O. Box 130, Tokeland, WA 98590–0130; (360) 267–6766 Fax: (360) 267–6778
Stacy Miller, Skokomish Tribal Council, N. 80 Tribal Center Road, Shelton, WA 98584–9748; (360) 426–7788 Fax: (360) 877–6585
Linda Charette, Squaxin Island Tribal Council, SE 70 Squaxin Lane, Shelton, WA 98584–9200; (360) 427–9006 Fax: (360) 427–1957
Gary Ramey, ICWA, Stillaguamish Tribe of Washington, P.O. Box 277, Arlington, WA 98223–0277; (360) 652–7362 Fax: (360) 435–7689
Ed Barnhart, ICWA, Suquamish Indian Tribe of the Port Madison Reservation, P.O. Box 498, Suquamish, WA 98392; (360) 598–3311 (Fax): 598–4414
Tracy Parker, ICWA, Swinomish Indians, P.O. Box 817, LaConner, WA 98256; (360) 466–3163
Linda Jones, ICWA, Tulalip Tribe, 6700 Totem Beach Road, Marysville, WA 98271; (360) 651–3284 Fax: (360) 651–3290
Michelle Anderson-Kamato, ICWA Upper Skagit Indian Tribe of Washington, 2284 Community Plaza Way, Sedro Woolley, WA 98284; (360) 856–4200 Fax: (360) 856–3537
Chief Judge Lola Sohappy, Warm Springs Tribal Court, Warm Springs Reservation, P.O. Box 850, Warm Springs, OR 97761; (541) 553–3454

Sacramento Area

Agua Caliente Band of Cahuilla Indians, Luke Madrigal, Director, Indian Child & Family Services, P.O. Box 2269, Temecula, CA 92390; (909) 676–8832
Alturas Rancheria, Shelley Holloway, ICWA Coordinator, Modoc Indian Health Project, P.O. Box 251, Alturas, CA 96101; (530) 233–5571
Auburn Rancheria, Chairperson, United Auburn Indian Community, 661 Newcastle Road, Suite 1, Newcastle, CA 95658; (916) 663–3720
Augustine Band of Mission Indians, Maryann Martin, Chair, 84–481 Avenue 54, Coachella, CA 92236; (760) 398–4722
Barona Band of Mission Indians, Linda Zuniga, ICSS Program Director, Southern Indian Health Council, Inc., P.O. Box 2128, Alpine, CA 91901; (619) 445–1188
Benton Paiute, Margaret Romero, ICWA Coordinator, Toiyabe Indian Health Project 52 Tusu Lane, Bishop, CA 93514; (760) 873–6394
Berry Creek Rancheria, April Cottrell, ICWA Coordinator, 5 Tyme Way, Oroville, CA 95966; (530) 534–3859
Big Lagoon Rancheria, Jolanda Ingram, Director, Two Feathers ICWA Program, P.O. Box 640, Eureka, CA 95502; (707) 443–6399
Big Pine Rancheria, Margaret Romero, ICWA Coordinator, Toiyabe Health Project, 52 Tusu Lane, Bishop, CA 93514; 760–873–6394 Fax: (760) 873–3254
Big Sandy Rancheria, Jeanelle Tex, ICWA Coordinator, P.O. Box 337, Auberry, CA 93602; (209) 855–4594 Fax: (209) 855–4129
Big Valley Rancheria, Valentino Jack, Chair, P.O. Box 955, Lakeport, CA 95453; (707) 263–3924
Bishop Reservation, Margaret Romero, ICWA Coordinator, Toiyabe Health Project, 52 Tu Su Lane, Bishop, CA 93514; (760) 873–6394
Blue Lake Rancheria, Chairperson, P.O. Box 428, Blue Lake, CA 95525; (707) 668–5101
Bridgeport Indian Colony, Margaret Romero, ICWA Coordinator, Toiyabe Health Project,

52 Tu Su Lane, Bishop, CA 93514; (760) 873–6394
Buena Vista Rancheria, Donnamarie Potts, Chairperson, 4650 Coalmine Road, Ione, CA 95640; (209) 274–6512
Cabazon Band of Mission Indians, Christina Lambert, ICWA Rep., 84–245 Indio Springs Drive, Indio, CA 92201; (760) 342–2593
Cahuilla Band of Mission Indians, Louis Madrigal, Executive Director, Indian Child & Family Services, P.O. Box 2269, Temecula, CA 92593; (909) 676–8832
Campo Band of Mission Indians, Ralph Goff, Chairman, 36190 Church Road, Suite 1, Campo, CA 91906; (619) 478–9046
Capitan Grande Band of Mission Indians, Linda Zuniga, ICSS Director, Southern Indian Health Council, P.O. Box 2128, Alpine, CA 91901; (619) 445–1188
Cedarville Rancheria, Cynthia Gonzales, ICWA Director, P.O. Box 126, Cedarville, CA 96104; (530) 279–2022 Fax: (530) 279–2025
Chicken Ranch Rancheria, Art Villegas, ICWA Coordinator, Inter Tribal Council, 2755 Cottage Way, Suite 14, Sacramento, CA 95825; (209) 984–4806 Fax: (209) 984–5606
Chico Rancheria, Cindy Phillips, Tribal Administrator, 3006 Esplanade, Suite H, Chico, CA 95926; (916) 899–8922 Fax: (916) 899–8517
Cloverdale Rancheria, Jeffrey Wilson, Chief, 2013 Long Leaf Court, Santa Rosa, CA 95403 (707) 523–3882
Cold Springs Rancheria, Jennifer Philley, Acting Chairperson, P.O. Box 209, Tollhouse, CA 93667; (209) 855–5043
Colusa Indian Community Council, Nolan Gonzales, ICWA Coordinator, 50 Wintun Road, Suite D, Colusa, CA 95932; (916) 458–8231
Cortina Rancheria, Mary Norton, Chair, P.O. Box 7470, Citrus Heights, CA 95621; (916) 726–7118
Coyote Valley Rancheria, Lorraine Laiwa, ICWA Coordinator, Indian Child Preservation Program, 684 S. Orchard Ave., Ukiah, CA 95482; (707) 463–2644
Cuyapaipe Band of Mission Indians, Vivian Silva, Tribal Administrator, P.O. Box 2250, Alpine, CA 91903–2250; (619) 445–6315
Dry Creek Rancheria, Elizabeth Derouen, ICWA Coordinator, Indian Child Preservation Program, 1400 Guerneville Road, Suite #10, Santa Rosa, CA 95401; (707) 463–2644
Elem Indian Colony, Tom Brown, Chair, P.O. Box 618, Clearlake Oaks, CA 95423; (707) 998–3431
Elk Valley Rancheria, Chairperson, P.O. Box 1042, Crescent City, CA 95531; (707) 464–4680
Enterprise Rancheria, Harvey Angle, Chairperson, 2950 Feather River Blvd., Oroville, CA 95965; (916) 532–9214 Fax: (916) 532–1768
Fort Bidwell Reservation, Chairperson, P.O. Box 129, Fort Bidwell, CA 96112; (530) 279–6310 Fax: (530) 279–233
Fort Independence Reservation, Margaret Romero, ICWA Coordinator, Toiyabe Health Project, 52 Tu Su Lane, Bishop, CA 93514; (760) 873–6394
Greenville Rancheria, Marjorie Timmons, ICWA Coordinator, 645 Antelope Blvd., Suite 15, Red Bluff, CA 96080; (530) 528–9000 Fax: (530) 528–9002
Grindstone Rancheria, Art Villegas, ICWA Coordinator, Inter Tribal Council, 2755 Cottage Way, Suite 14, Sacramento, CA 95825; (916) 968–5365
Guidiville Rancheria, Chairperson, P.O. Box 339, Talmage, CA 95481; (707) 462–3682 Fax: (707) 462–9183
Hoopa Valley Tribe, Mille Grant, Director, Social Services, Sara Burcell & Marian Matz, ICWA Program, P.O. Box 1267, Hoopa, CA 95546; (916) 625–4236
Hopland Band of Pomo Indians, Lorraine Laiwa, ICWA Coordinator, Indian Child Preservation Program, 684 S. Orchard Ave., Ukiah, CA 95482; (707) 463–2644
Inaja & Cosmit Band of Mission Indians, Gustavo Galindo, Ph.D., Director, Indian Health Council, Inc., P.O. Box 406, Pauma Valley, CA 92061; (760) 749–1410 X245
Ione Band of Miwok Indians, Kathy Ramey, Chair, P.O. Box 1190, Ione, CA 95640; (209) 274–6431 Fax: (209) 274–6471
Jackson Rancheria, Rhonda Geisdorff, ICWA Manager, Tuolumne Indian Child & Family Services, P.O. Box 615, Tuolumne, CA 95379; (209) 223–1935 Fax: (209) 223–5366
Jamul Indian Village, Linda Zuniga, ICSS Director, Southern Indian Health Council, P.O. Box 2128, Alpine, CA 91901; (619) 669–4785
Karuk Tribe of California, Chuck Lent, Director, Social Services, April Attebury, ICWA Social Worker, P.O. Box 1016, Happy Camp, CA 96039; (530) 493–5305 or (530) 842–9228 Fax (530) 93–5378
La Jolla Band of Mission Indians, Jack Musick, Chairman, Star Route Box 158, Valley Center, CA 92082; (760) 742–3771
La Posta Band of Mission Indians, Linda Zuniga, ICSS Program Director, Southern Indian Health Council, P.O. Box 2128, Alpine, CA 91903–2128; (619) 445–1188
Laytonville Rancheria, Lorraine Laiwa, ICWA Coordinator, Indian Child Preservation Program, 684 S. Orchard Avenue, Ukiah, CA 95482; (707) 463–2644 Fax: (707) 984–6201
Lone Pine Reservation, Margaret Romero, ICWA Coordinator, Toiyabe Indian Health Project, 52 Tu Su Lane, Bishop, CA 935314; (760) 873–6394
Los Coyotes Band of Mission Indians, Gustavo Galindo, Ph.D., Director, Indian Health Council, Inc., P.O. Box 406, Pauma Valley, CA 92061; (760) 749–1410 X245
Lytton Rancheria, Margie Mejia, Chair, 1250 Coddingtown Center, Suite 1, Santa Rosa, CA 95401–3515; (707) 575–5917 Fax: (707) 575–6974
Manchester-Point Arena Rancheria, Lorraine Laiwa, ICWA Coordinator, Indian Child Preservation Program, 684 S. Orchard Avenue, Ukiah, CA 95482; (707) 463–2644
Manzanita Band of Mission Indians, Francis Shaw, Chair, P.O. Box 1302, Boulevard, CA 91905; (619) 766–4930
Mesa Grande Band of Mission Indians, Gustavo Galindo, Ph.D., Director, Indian Health Council, Inc., P.O. Box 460, Pauma Valley, CA 92061; (619) 782–3835
Middletown Rancheria, Art Villegas, ICWA Coordinator, Inter Tribal Council, 2755 Cottage Way, Suite 14, Sacramento, CA 95825; (707) 987–3670
Mooretown Rancheria, Francine Mckinley, ICWA Coordinator, 1 Alverda Drive, Oroville, CA 95966; (916) 533–3625 Fax: (916) 533–3680
Morongo Reservation, Francis Jurado, ICWA Rep., 11581 Potrero Road, Banning, CA 92220; (909) 849–4697
Northfork Rancheria, Delores Roberts, Chairperson, P.O. Box 929, North Fork, CA 93643; (209) 877–2461 Fax: (209) 877–2467
Pala Reservation, Robert Smith, Chair, P.O. Box 43, Pala, CA 92059; (619) 742–3784
Paskenta Rancheria, Everett Freeman, Chair, P.O. Box 398, Orland, CA 95963; (530) 865–3111 Fax: (530) 865–2345
Pauma & Yuima Band of Mission Indians, Ben Magante, Chair, Marilyn Majel, ICWA Rep., P.O. Box 86, Pauma Valley, CA 92061; (760) 742–1289
Pechanga Band of Mission Indians, Mark Macarro, Spokesman, P.O. Box 1477, Temecula, CA 92593; (909) 676–2768
Picayune Rancheria, Gilbert Cordero, Chairman, Carolyn Hoover, ICWA Coordinator, P.O. Box 269, Coarsegold, CA 93614; (209) 683–6633
Pinoleville Rancheria, Michael Mcgee, ICWA Director, 367 North State Street, Suite 204, Ukiah, CA 95482; (707) 463–1454
Pit River Reservation, Ben Jimenez, ICWA Director, P.O. Drawer 1570, Burney, CA 96013; (530) 335–5421 Fax: (530) 335–3140
Potter Valley Rancheria, Chairperson, Tribal Council, 417 D Talmage Road, Ukiah, CA 95482; (707) 468–7494
Quartz Valley Indian Reservation, Lavon Kent, ICWA Director, P.O. Box 24, Fort Jones, CA 96032; (916) 468–5937 Fax: (916) 468–2491
Ramona Band of Mission Indians, Louis Madrigal, Executive Director, Indian Child & Family Services, P.O. Box 2269, Temecula, CA 92593
Redding Rancheria, Robin Bailey-Boyle, Director, Social Services, 2000 Rancheria Road, Redding, CA 96001–5528; (530) 225–8979
Redwood Valley Reservation, Mary Navarez, ICWA Coordinator, 3250 Road 1, Redwood Valley, CA 95470; (707) 485–0361 Fax: (707) 485–5726
Resighini Rancheria Coast Indian Community, Chairperson, P.O. Box 529, Klamath, CA 95548; (707) 482–2431 Fax: (707) 482–3425
Rincon Band of Mission Indians, Gustavo Galindo, Ph.D., Director, Indian Health Council, P.O. Box 406, Pauma Valley, CA 92061; (760) 749–1410 X245
Robinson Rancheria, David Gonzales, ICWA Director, P.O. Box 1119, Nice, CA 95464; (707) 275–9363
Rohnerville Rancheria, Jolanda Ingram, Director, Two Feathers ICWA Program, P.O. Box 640, Eureka, CA 95502; (707) 443–6399
Round Valley Indian Tribes, Rebecca Duncan, ICWA Manager, P.O. Box 448, Covelo, CA 95428; (707) 983–8008 Fax: (707) 983–6128
Rumsey Rancheria, Paula Lorenzo, Chair, P.O. Box 18, Brooks, CA 95606; (916) 796–3400
San Manuel Band of Mission Indians, Henry Duro, Chair, P.O. Box 266, Patton, CA 92369; (909) 864–8933

San Pasqual Band of Mission Indians, Olga Quisquis, ICWA Rep., P.O. Box 365, Valley Center, CA 92082; (760) 749–3200
Santa Rosa Band of Mission Indians, Anthony Largo, Spokesman, Margarita Arviso, ICWA Rep., 325 N Western Avenue, Hemet, CA 92343; (909) 849–4761
Santa Rosa Rancheria, Susan Weese, ICWA Coordinator, P.O. Box 8, Lemoore, CA 93245–0008; (209) 924–1278
Santa Ynez Band of Mission Indians, Columba Quintero, ICWA Rep., P.O. Box 317, Santa Ynez, CA 93460; (805) 688–7997
Santa Ysabel Band of Mission Indians, Victor Paipa, ICWA Rep., P.O. Box 130, Santa Ysabel, CA 92070; (760) 765–0846
Scotts Valley Rancheria, Mary Camp, Tribal Administrator, 149 N Main Street, Suite 200, Lakeport, CA 95453; (707) 263–4771 Fax: (707) 263–4773
Sheep Ranch Rancheria, Spokesperson, (No Address), Sheep Ranch, CA 95250
Sherwood Valley Rancheria, Valerie Stanley, Administrator, Lois Fluke, ICWA Advocate, 190 Sherwood Hill Drive, Willits, CA 95490; (707) 459–9690 Fax: (707) 459–6936
Shingle Springs Rancheria, James Adams, Chairperson, P.O. Box 1340, Shingle Springs, CA 95682; (530) 676–8010
Smith River Rancheria, Elvira Rodriquez, ICWA Director, 250 N Indian Road, Smith River, CA 95567–9525; (707) 487–9255 Fax: (707) 487–0930
Soboba Band of Mission Indians, Margaret Wallis, Project Manager, P.O. Box 487, San Jacinto, CA 92581; (909) 654–2765
Stewarts Point Rancheria, Elizabeth Derouen, ICWA Coordinator, Indian Child Preservation Program, 1400 Guerneville Road, Suite #10, Santa Rosa, CA 95401; (707) 569–7208
Susanville Rancheria, Victor Preston, Chairman, P.O. Drawer U, Susanville, CA 96130; (530) 257–6264
Sycuan Band of Mission Indians, Linda Zuniga, ICSS Program Director, Southern Indian Health Council, P.O. Box 2128, Alpine, CA 91903–2128; (619) 445–2613
Table Bluff Rancheria, Carol Segura, ICWA Coordinator, P.O. Box 519, Loleta, CA 95551; (707) 733–5055 Fax: (707) 733–5601
Table Mountain Rancheria, Lee Heeren Tribal, Administrator, P.O. Box 410, Friant, CA 93626–0410; (209) 822–2587 Fax: (209) 822–2693
Timbi-sha Shoshone Tribe, Margaret Romero, ICWA Coordinator, Toiyabe Indian Health Project, 52 Tu Su Lane, Bishop, CA 93514; (760) 786–2374
Torres-Martinez Desert Cahuilla Indians, Mary Belardo, ICWA Rep., P.O. Box 1160, Thermal, CA 92274; (760) 397–8144
Trinidad Rancheria, Chairperson, P.O. Box 630, Trinidad, CA 95570; (707) 677–0211 Fax: (707) 677–3921
Tule River Reservation, Louise Cornell, ICWA Director, P.O. Box 589, Porterville, CA 93258; (209) 781–4271
Tuolumne Rancheria, Rhonda Geisdorff, ICWA Manager, P.O. Box 615, Tuolumne, CA 95379; (209) 928–3475
Twenty-Nine Palms, Louis Madrigal, Executive Director, Indian Child & Family Services, P.O. Box 1160, Temecula, CA 92593; (909) 676–8832
Upper Lake Rancheria, Chairperson, P.O. Box 245272, Sacramento, CA 95820; (916) 371–2576
Viejas (Baron Long) Band of Mission Indians, Linda Zuniga, ICSS Program Director, Southern Indian Health Council, P.O. Box 2128, Alpine, CA 91903; (619) 445–1188
Yurok Tribe of California, Carol Melendy, Director, Social Services, Vicki Moore, ICWA Coordinator, 1034 Sixth Street, Eureka, CA 95501; (707) 444–0433 Fax: (707) 444–0437

Dated: February 25, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–5640 Filed 3–8–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

National Park Service

Cape Cod National Seashore, South Wellfleet, Massachusetts; Cape Cod National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Wednesday, March 24, 1999.

The Commission was reestablished pursuant to Public Law 87–126 as amended by Public Law 105–280. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The Commission members will meet at 9:30 a.m. at Headquarters, Marconi Station, Wellfleet, Massachusetts for the regular business meeting to discuss the following:

1. Adoption of Agenda
2. Approval of Minutes of Previous Meetings 01/23/98 and 03/20/98
3. Reports of Officers
4. Report of Nickerson Subcommittee
5. Superintendent's Report
   New staff
   Highlands Center
   Hatches Harbor, airport
   Salt Pond Visitor Center rehabilitation
   ''Pathways''-trail extension
   Cellular transmission facilities
   Personal watercraft
   News from Washington
6. Old Business
   Use and Occupancy Subcommittee
7. New Business
   Commercial certificates of suspension renewals
   ORV Regulation Subcommittee (ORV permit cap)
8. Agenda for next meeting
9. Date for next meeting
10. Public comment
11. Adjournment

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Dated: March 1, 1999.

Maria Burks,

Superintendent.

[FR Doc. 99–5553 Filed 3–8–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 27, 1999.

Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by March 24, 1999.

Carol D. Shull,

Keeper of the National Register.

CALIFORNIA

Los Angeles County

Judson Studios, 200 S. Avenue Sixty-Six, Los Angeles, 99000370

COLORADO

El Paso County

Colorado Springs and Cripple Creek District Railway—Corley Mountain Highway, Gold Camp Rd. and Forest Rd. 370, Colorado Springs vicinity, 99000400

FLORIDA

Hendry County

Downtown LaBelle Historic District, 300 Block of N. Bridge St., LaBelle, 99000371

Jefferson County

Monticello High School, 425 W. Washington St., Monticello, 99000373

Marion County

Belleview School, 5343 SE Abshier Blvd., Belleview, 99000372

MAINE

Cumberland County

Merrill, Capt. Reuel and Lucy, House, 66 Winn Rd., Cumberland Center Station vicinity, 99000378

Hancock County

Hulls Cove High School, ME 3, 0.4 mi. N of jct. of Crooked Rd. and ME 3, Hulls Cove, 99000374

Penobscot County

Bank Block, 15 Main St., Dexter, 99000375

Sagadahoc County

Percy District School House (Former), Jct. of Parker Head Rd. and Cox Head Rd., Parker Head vicinity, 99000377

Small Point Club, Club Rd., 0.3 mi. S of jct. of ME 216 and Club Rd., Small Point vicinity, 99000376

MISSISSIPPI

Adams County

Downriver Residential Historic District, Roughly bounded by S. Canal St., Orleans St., Illinois Central Gulf RR tracks, and bayou bet. Union and Rankin Sts., Natchez, 99000385

Forrest County

New York, The, 63 Fruitland Park Rd., Fruitland Park, 99000383

Lee County

Tombigbee State Park (State Parks in Mississippi built by the CCC MPS), MS 2, SE of Tupelo, off MS 78, Tupelo vicinity, 99000382

Leflore County

Wesley Methodist Church Historic District, Roughly bounded by Cotton, Howard, Palace, Weeks Lane, and W. Johnson, Greenwood, 99000381

Lincoln County

Moreton Jr., A.E., House, 610 S. Jackson St., Brookhaven, 99000384

MISSOURI

Henry County

Crome, William F. and Julia, House, 305 S. Second St., Clinton, 99000380

Lafayette County

House at 1413 Lafayette St., 1413 Lafayette St., Lexington, 99000379

NEBRASKA

Buffalo County

Kiehm House, 2215 9th Ave., Kearney, 99000388 Meisner Bank Building, 128 C St., Shelton, 99000390

Holt County

Sturdevant, Brantly, House, 308 S. Main St., Atkinson, 99000387

Jefferson County

Fairbury Jr/Sr High School and Gymnasium-Auditorium, Roughly bounded by J and K St., and 7th and 8th Sts., Fairbury, 99000391

Lancaster County

Spalding, Frank M., House, 2221 Sheridan Blvd., Lincoln, 99000386

Pawnee County

Lindsley House, 706 Luzerne St., Table Rock, 99000389

NEW JERSEY

Warren County

Perry—Petty Farmstead, 882 Jackson Valley Rd., Mansfield Township, 99000392

NORTH CAROLINA

Rowan County

Fulton Heights Historic District, Roughly bounded by Fulton St., Heilig Ave., Ridge Ave., and Boyden St., Salisbury, 99000394

Salisbury National Cemetery (Civil War Era Cemeteries MPS), 202 Government Rd., Salisbury, 99000393

SOUTH CAROLINA

Colleton County

Hotel Albert Commerical Block, 529, 539 545 E. Washington St., Walterboro, 99000395

York County

People's National Bank Building, 131–133 E. Main St., Rock Hill, 99000396

TENNESSEE

Rutherford County

Beesley Primitive Baptist Church, 461 Beesley Rd., Murfreesboro vicinity, 99000397

UTAH

Garfield County

Owens Jr., William T. and Mary Isabell R., House, 95 N 100 E, Panguitch, 99000399

Summit County

Woodside Miners Lodge (Mining Boom Era Houses TR), 615 Woodside Ave., Park City, 99000398

Uintah County

Fenn—Bullock House, 388 W 100 N, Vernal, 99000401

WASHINGTON

Chelan County

Lord, Richard Hinton, House, 121 E. Highland Ave., Chelan vicinity, 99000404

Douglas County

Nifty Theatre, 201 Locust, Waterville, 99000402

King County

Camlin Hotel, 1619 Ninth St., Seattle, 99000405

Whatcom County

Oakland Block, 310–318 W. Holly St. and 419 Champion St., Bellingham, 99000403

[FR Doc. 99–5744 Filed 3–8–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–2–94]

Electro-Test, Inc., Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the Agency's final decision on the application of Electro-Test, Inc. (ETI), for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

EFFECTIVE DATE: This recognition becomes effective on March 9, 1999 and, unless modified in accordance with 29 CFR 1910.7, continues in effect while ETI remains recognized by OSHA as an NRTL.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3653, Washington, D.C. 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice of the expansion of recognition of Electro-Test, Inc. (ETI) as a Nationally Recognized Testing Laboratory (NRTL). The expansion covers the use of an additional test standard. OSHA recognizes an organization as an NRTL, and processes applications related to such recognitions, following requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Appendix A to this section requires that OSHA publish this public notice of its final decision on an application.

ETI submitted a request, dated September 2, 1998 (see Exhibit 11), to expand its recognition to use an additional test standard. OSHA published the required notice in the **Federal Register** (63 FR 63083, 11/10/98) to announce the application. The notice included a preliminary finding

that ETI could meet the requirements in 29 CFR 1910.7 for expansion of its recognition, and invited public comment on the applications by January 11, 1999. OSHA received no comments concerning this application. ETI's previous application as an NRTL covered its initial recognition (60 FR 30495, 6/9/95), which OSHA granted on October 6, 1995 (60 FR 52417).

You may obtain or review copies of all public documents pertaining to the application by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N2625, Washington, D.C. 20210. You should refer to Docket No. NRTL–2–94, the permanent record of public information on the ETI recognition.

The current addresses of the testing facilities (sites) that OSHA recognizes for ETI are:

• Electro-Test, Inc., 3470 Fostoria Way, Suite B, San Ramon, California 94583

Electro-Test, Inc., 3150–B E. Birch Street, Brea, California 92821

• Due to city boundary lines, this site has two addresses. The NRTL has requested use of the address shown above. In the notice of the preliminary finding, the other address was listed for this site: 1320 El Capitan Drive, 4th Floor, Danville, California 94526.

Final Decision and Order

The NRTL Program staff has examined the application, other pertinent information, and the recommendation by the audit staff, in a memo dated September 9, 1998 (see Exhibit 12), to expand ETI's recognition to include the additional test standard. Based upon this examination, OSHA finds that ETI has met the requirements of 29 CFR 1910.7 for expansion of its recognition to use the additional test standards, subject to the limitations and conditions listed below. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the recognition of ETI, subject to these limitations and conditions. As is the case for any NRTL, ETI's recognition is further limited to equipment or materials (products) for which OSHA standards require third party testing and certification before use in the workplace.

Limitations

OSHA hereby expands the recognition of ETI for testing and certification of products to demonstrate compliance to the following test standard: ANSI/UL 508C Power Conversion Equipment. OSHA has determined that this standard meets the requirements for an appropriate test standard prescribed in 29 CFR 1910.7(c).

Conditions

ETI must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

OSHA must be allowed access to ETI's facility and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If ETI has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

ETI must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, ETI agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

ETI must inform OSHA as soon as possible, in writing, of any change of ownership or key personnel, and of any major changes in its operations as an NRTL, including details;

ETI will meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition;

ETI will continue to meet the requirements for recognition in all areas where it has been recognized; and

ETI will always cooperate with OSHA to assure compliance with the spirit as well as the letter of its recognition and 29 CFR 1910.7.

Signed at Washington, D.C. this 24th day of February, 1999.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 99–5789 Filed 3–8–99; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–2–93]

Entela, Inc., Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the Agency's final decision on the application of Entela, Inc. (ENT), for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

EFFECTIVE DATE: This recognition becomes effective on March 9, 1999 and, unless modified in accordance with 29 CFR 1910.7, continues in effect while ENT remains recognized by OSHA as an NRTL.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3653, Washington, D.C. 20210, or phone (202) 693–2110 .

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice of the expansion of recognition of Entela, Inc. (ENT), as a Nationally Recognized Testing Laboratory (NRTL) to include the use of the additional test standards listed below. OSHA recognizes an organization as an NRTL and processes application related to such recognitions following requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Appendix A to this section requires that OSHA publish this public notice of its final decision on an application.

ENT submitted a request, dated August 10, 1998 (see Exhibit 15), to expand its recognition to use additional test standards. ENT's request for expansion also includes its timely request for renewal of its recognition. However, ENT'S recognition as an NRTL does not expire until July 26, 1999. As part of renewing the recognition, staff for the NRTL Program plans to perform an on-site review of one or both of the ENT testing sites. These reviews are part of the normal process for granting an NRTL a renewal of its recognition. OSHA's recognition of ENT's site in Taipei, Taiwan, currently includes certain limitations that are applicable to the testing and evaluation of products under the test standards listed below. These limitations are repeated in this notice.

OSHA published the required notice in the **Federal Register** (63 FR 63084, 11/10/98) to announce the application. The notice included a preliminary finding that ENT could meet the requirements in 29 CFR 1910.7 for expansion of its recognition, and invited public comment on the applications by January 11, 1999. OSHA received no

comments concerning this application. ENT's previous application as an NRTL also covered an expansion for use of additional test standards (63 FR 19275, 4/17/98), which OSHA granted on July 10, 1998 (63 FR 37416).

You may obtain or review copies of all public documents pertaining to the application by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N2625, Washington, D.C. 20210. You should refer to Docket No. NRTL–2–93, the permanent record of public information on the ENT recognition.

The current addresses of the testing facilities (sites) that OSHA recognizes for ENT are: Entela, Inc., 3033 Madison, S.E., Grand Rapids, Michigan 49548; and Entela Taiwan Laboratories, 3F No. 260 262 Wen, Lin North Road, Pei Tou, Taipei, Taiwan.

Final Decision and Order

The NRTL Program staff has examined the application, other pertinent information, and the recommendation by the audit staff, in a memo dated September 9, 1998 (see Exhibit 16), to expand ENT's recognition to include the additional test standards. Based upon this examination, OSHA finds that ENT has met the requirements of 29 CFR 1910.7 for expansion of its recognition to use an additional 18 test standards, subject to the limitations and conditions listed below. Pursuant to the authority in 29 CFR 1919.7, OSHA hereby expands the recognition of ENT, subject to these limitations and conditions. As is the case for any NRTL, ENT's recognition is further limited to equipment or materials (products) for which OSHA standards require third party testing and certification before use in the workplace.

Limitations

OSHA hereby expands the recognition of ENT for testing and certification of products to demonstrate compliance to the following 18 standards. OSHA has determined that each standard meets the requirements for an appropriate test standards prescribed in 29 CFR 1910.7(c).

ANSI/UL 187 X-Ray Equipment
ANSI/UL 563 Ice Makers
ANSI/UL 867 Electrostatic Air Cleaners
ANSI/UL 916 Energy Management Equipment
ANSI/UL 924 Emergency lighting and Power Equipment
UL 962 Household and Commercial Furnishing
ANSI/UL 1069 Hospital Signaling and Nurse-Call System
ANSI/UL 1088 Temporary Lighting Strings
ANSI/UL 1236 Battery Chargers
ANSI/UL 1418 Implosion-Protected Cathode-Ray Tubes for Television-Type Appliances
ANSI/UL 1472 Solid-State Dimming Controls
ANSI/UL 1492 Audio and Video Equipment
ANSI/UL 1564 Industrial Battery Chargers
ANSI/UL 1573 Stage and Studio Lighting Units
ANSI/UL 1638 Visual Signaling Appliances
UL 1993 Self-Ballasted Lamps and Lamp Adapters
ANSI/UL 2044 Commercial Closed Circuit Television Equipment
UL 3044 Surveillance Closed Circuit Telvision Equipment

The following limitations apply to the recognition of the Taiwan facility:

a. The Taiwan facility shall be limited to carrying out minor mechanical and electrical testing of instruments and small appliances.

b. Performance of inspections shall be limited to Entela personnel.

Conditions

ENT must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

OSHA must be allowed access to ENT's facility and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If ENT has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

ENT must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, ENT agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

ENT must inform OSHA as soon as possible, in writing, of any change of ownership or key personnel, and of any major changes in its operations as an NRTL, including details;

ENT will meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition;

ENT will continue to meet the requirements for recognition in all areas where it has been recognized; and

ENT will always cooperate with OSHA to assure compliance with the spirit as well as the letter of its recognition and 29 CFR 1910.7.

Signed at Washington, D.C. this 24th day of February, 1999.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 99–5788 Filed 3–8–99; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–1–88]

MET Laboratories, Inc., Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the Agency's final decision on application of MET Laboratories, Inc. (MET), for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

EFFECTIVE DATE: This recognition becomes effective on March 9, 1999 and, unless modified in accordance with 29 CFR 1910.7, continues in effect while MET remains recognized by OSHA as an NRTL.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice of the expansion of recognition of MET Laboratories, Inc. (MET), as a Nationally Recognized Testing Laboratory (NRTL) to include the use of the additional test standards listed below. OSHA recognizes an organization as an NRTL and processes applications related to such recognitions following requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Appendix A to this section requires that OSHA

publish this public notice of its final decision on an application.

MET submitted a request, dated June 3, 1998 (see Exhibit 20A), to expand its recognition to use additional test standards. MET provided some additional information related to this request on August 21, 1998 (see Exhibit 20B). MET will notify OSHA, as stated in this letter, regarding a change in its existing capability to perform explosion tests. Relatedly, OSHA is imposing limitations on the testing permitted under certain test standards.

OSHA published the required notice in the **Federal Register** (63 FR 63085, 11/10/98) to announce the application. The notice included a preliminary finding that MET could meet the requirements in 29 CFR 1910.7 for expansion of its recognition, and invited public comment on the applications by January 11, 1999. OSHA received no comments concerning this application. MET's previous application as an NRTL covered the renewal and an expansion of its recognition (61 FR 41661, 8/6/96), which OSHA granted on November 20, 1996 (61 FR 225).

You may obtain or review copies of all public documents pertaining to the application by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N2625, Washington, DC 20210. You should refer to Docket No. NRTL–1–88, the permanent record of public information on the MET recognition.

The current address of the testing facility (site) that OSHA recognizes for MET is: MET Laboratories, Inc., 914 West Patapsco Avenue, Baltimore, Maryland 21230.

Final Decision and Order

The NRTL Program staff has examined the application, additional information submitted, other pertinent information, and the recommendation by the audit staff, in a memo dated September 9, 1998 (see Exhibit 21), to expand MET's recognition to include the additional test standards. Based upon this examination, OSHA finds that MET has met the requirements of 29 CFR 1910.7 for expansion of its recognition to use an additional 17 test standards, subject to the limitations and conditions listed below. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the recognition of MET, subject to these limitations and conditions. As is the case for any NRTL, MET's recognition is further limited to equipment or materials (products) for which OSHA standards require third party testing and certification before use in the workplace.

Limitations

OSHA hereby expands the recognition of MET for testing and certification of products to demonstrate compliance to the following 17 standards. OSHA has determined that each standard meets the requirements for an appropriate test standard prescribed in 29 CFR 1910.7(c).

ANSI/UL 5 Surface Metal Raceways and Fittings
ANSI/UL 50 Enclosures for Electrical Equipment
ANSI/UL 65 Electric Wired Cabinets
ANSI/UL 201 Garage Equipment
ANSI/UL 482 Portable Sun/Heat Lamps
ANSI/UL 514A Metallic Outlet Boxes, Electrical
UL 664 Commercial Dry-Cleaning Machines (Type IV)
ANSI/UL 698 Industrial Control Equipment for Use in Hazardous (Classified) Locations
UL 775 Graphic Arts Equipment
ANSI/UL 886 Outlet Boxes and Fittings for Use in Hazardous (Classified) Locations [1]
ANSI/UL 1017 Vacuum Cleaning Machines and Blower Cleaners
ANSI/UL 1018 Electric Aquarium Equipment
ANSI/UL 1054 Special-Use Switches
ANSI/UL 1203 Explosion-Proof and Dust-Ignition-Proof Electrical Equipment for Use in Hazardous (Classified) Locations [1]
ANSI/UL 1310 Direct Plug-In Transformer Units
ANSI/UL 1573 Stage and Studio Lighting Units
UL 6500 Audio/Visual and Musical Instrument Apparatus for Household, Commercial, and Similar General Use

Conditions

MET must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

OSHA must be allowed access to MET's facility and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If MET has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

MET must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, MET agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

MET must inform OSHA as soon as possible, in writing, of any change of ownership or key personnel, and of any major changes in its operations as an NRTL, including details;

MET will meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition;

MET will continue to meet the requirements for recognition in all areas where it has been recognized; and

MET will always cooperate with OSHA to assure compliance with the spirit as well as the letter of its recognition and 29 CFR 1910.7.

Signed at Washington, DC, this 24th day of February, 1999.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 99–5791 Filed 3–8–99; 8:45 am]

BILLING CODE 4510–26–P

[1] Testing and certification of products under this test standard is limited to Class I locations. Explosion testing is also limited to current test chamber capabilities.

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–3–90]

Southwest Research Institute, Renewal & Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the Agency's final decision on the applications of Southwest Research Institute (SwRI), under 29 CFR 1910.7, for renewal of its recognition as a Nationally Recognized Testing Laboratory (NRTL), and for an expansion of its recognition to use additional test standards.

EFFECTIVE DATE: This recognition becomes effective on March 9, 1999, unless modified in accordance with 29 CFR 1910.7, continues in effect while SwRI remains recognized by OSHA as an NRTL.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities,

NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3653, Washington, D.C. 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice of the renewal of recognition of Southwest Research Institute (SwRI) as a Nationally Recognized Testing Laboratory (NRTL) and the expansion of recognition to include the use of the additional test standards listed below. OSHA recognizes an organization as an NRTL and processes applications related to such recognitions following requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Appendix A to this section requires that OSHA publish this public notice of its final decision on an application.

When first recognized, OSHA identified the Department of Fire Technology as the SwRI unit to which the recognition would apply. The renewal of recognition continues to apply primarily to this part of SwRI, although part of the recognition, such as the requirement for independence, applies to SwRI as a whole.

SwRI received its recognition as an NRTL on July 13, 1993 (58 FR 37752), for a period of five years ending July 13, 1998. Appendix A to 29 CFR 1910.7 stipulates that the period of recognition of an NRTL is five years and that an NRTL may renew its recognition by applying not less than nine months, nor more than one year, before the expiration date of its current recognition. SwRI applied for renewal of its recognition on October 1, 1997 (see Exhibit 6A), within the time allotted, and retained its recognition pending OSHA's final decision in this renewal process.

SwRI submitted a request, also dated on October 1, 1997 (see Exhibit 6B), to expand its recognition to use additional test standards. OSHA determined that some of the standards that were requested are not appropriate, as prescribed by 29 CFR 1910.7(c). In addition, OSHA had recognized SwRI for ASTM E152 but the standards organization has since withdrawn this standard. As a result, this standard is not included in SwRI's renewal. In general, OSHA's recognition only applies to the test standards listed below.

OSHA published the required notice in the **Federal Register** (63 FR 63086, 11/10/98) to announce the applications. The notice included a preliminary finding that SwRI could meet the requirements in 29 CFR 1910.7 for renewal and for expansion of its recognition, and invited public comment on the applications by January 11, 1999. OSHA received no comments concerning these applications. SwRI's previous application as an NRTL covered its recognition (57 FR 30237, 7/8/92), which OSHA granted on the date noted above.

You may obtain or review copies of all public documents pertaining to the applications by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N2625, Washington, D.C. 20210. You should refer to Docket No. NRTL–3–90, the permanent record of public information on the SwRI recognition.

The current address of the testing facility (site) that OSHA recognizes for SwRI is: Southwest Research Institute, Department of Fire Technology, 6620 Culebra Road, Post Office Drawer 28510, San Antonio, Texas 78228.

Final Decision and Order

The NRTL Program staff has examined the applications, the OSHA staff findings and recommendations, including the on-site review report, dated June 12, 1998 (see Exhibit 7) and other pertinent documents related to the applications. Based upon this examination, OSHA finds that SwRI Department of Fire Technology has met the requirements of 29 CFR 1910.7 for the renewal of recognition of its San Antonio, Texas site, and for expansion of its recognition to use additional test standards, subject to the limitations and conditions listed below. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby renews and expands the recognition of SwRI, subject to these limitations and conditions. As is the case for any NRTL, SwRI's recognition is further limited to equipment or materials (products) for which OSHA standards require third party testing and certification before use in the workplace.

Limitations

Renewal of NRTL Recognition

OSHA hereby renews the recognition of SwRI for testing and certification of products to demonstrate compliance to the following 7 test standards that OSHA previously recognized for SwRI. OSHA has determined each standard continues to meet the requirements for an appropriate test standard prescribed in 29 CFR 1910.7(c).

UL 10A Tin-Clad Fire Doors
ANSI/UL 10B Fire Tests of Door Assemblies
ANSI/UL 94 Tests for Flammability of Plastic Materials for Parts in Devices and Appliances
ANSI/UL 155 Tests of Fire Resistance of Vault and File Room Doors
ANSI/UL 555 Fire Dampers
ANSI/UL 910 Test Method for Fire and Smoke Characteristics of Electrical and Optical-Fiber Cables Used in Air Handling Spaces
ANSI/UL 1887 Fire Test of Plastic Sprinkler Pipe for Flame and Smoke Characteristics

Expansion of Recognition—Additional Test Standards

OSHA hereby expands the recognition of SwRI for testing and certification of products to demonstrate compliance to the following 3 test standards. OSHA has determined that each standard meets the requirements for an appropriate test standard prescribed in 29 CFR 1910.7(c).

UL 162 Foam Equipment and Liquid Concentrates
ANSI/UL 711 Rating and Fire Testing of Fire Extinguishers
UL 2085 Insulated Aboveground Tanks for Flammable and Combustible Liquids

Conditions

SwRI must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

OSHA must be allowed access to SwRI's facility and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If SwRI has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

SwRI must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, SwRI agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

SwRI must inform OSHA as soon as possible, in writing, of any change of ownership or key personnel, and of any

major changes in its operations as an NRTL, including details;

SwRI will meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition;

SwRI will continue to meet the requirements for recognition in all areas where it has been recognized; and

SwRI will always cooperate with OSHA to assure compliance with the spirit as well as the letter of its recognition and 29 CFR 1910.7.

Signed at Washington, D.C., this 24th day of February 1999.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 99–5790 Filed 3–8–99; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. This is the *second notice* for public comment; the first was published in the **Federal Register** at 63 FR 67150, *and no comments were received*. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. 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; and (d) was 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: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725–17th Street, N.W. Room 10235, Washington, D.C. 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send email to splimpto@nsf.gov. 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 703–306–1125 X 2017.

NSF 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.

Title: Outcomes and Impacts of the State/Industry University Research Center (S/IUCRC) Program.

OMB Control Number: 3145–0153.

Summary of Collection: NSF's Directorate for Engineering established the State/Industry-University Cooperative Research Centers (S/IUCRC) Program in 1990. The Program was built on a model established by NSF's Industry/University Cooperative Research Centers.

To achieve these objectives, data will be collected from representatives from organizations that have been members of the nine oldest S/IUCRCs (award cohorts 1991 and 1992) about the results in their organization of involvement with the center. Data will not be used to evaluate individual centers, but, rather, to study the Program as a whole. To isolate the unique effects of the distinctive features of the S/IUCRC Program, the project also will include a collection of similar data from organization representatives to 20 of the I/IUCRCs as well (there are over 50 I/IUCRCs) The I/UCRC data will be compared with the S/IUCRC data to enable identification of results from the S/IUCRC Program that emanate from the latter Program's distinctive elements.

Need and Use of the Information: The resulting information will be used to look at program-wide patterns of outcomes and impacts on organizations that are members of both types of centers. Lessons learned will be used for continuous performance improvement in the presently funded S/IUCRCs. In addition, lessons about the characteristics that facilitate state-NSF partnerships will be prepared for use in future planning of state-NSF partnerships.

Dexcription of Respondents: Individuals.

Number of Respondents: 580 (80% expected to respond—464 respondents).

Frequency of Responses: One time.

Total Burden Hours: 232 hours, broken down by 30 minutes per respondent at 580 respondents.

Dated: March 3, 1999.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 99–5677 Filed 3–8–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Proposed Data Collection: Public's Views and Comments

Title of Proposed Collection: Public Attitudes About Technology

The National Science Foundation, an independent federal agency, is interested in obtaining the public's views and attitudes toward year 2000 computer readiness.

Specifically, we are seeking input and comments from all interested persons on their views of the value of computer technology in their lives, and their familiarity with and level of comfort when using computers and their familiarity with problems that may result from year 2000 computer conversion issues.

In an effort to obtain the public's input and useful information, the National Science Foundation has developed the questions that follow. Responses from the public will be used only in the aggregate, and only to help NSF in its efforts to better explain itself and its activities to the American public.

We hope you will provide us with your thoughts on the following questions. Detailed comments are also welcome and greatly appreciated.

Responses and comments can be mailed to Public Attitudes about Year 2000 Conversion, c/o Office of Legislative and Public Affairs, National Science Foundation, 4201 Wilson Blvd., Room 1245, Arlington, VA 22230. Comments can also be sent via email to *nstw@nsf.gov*, or faxed to (703) 306–1057.

All comments should be received by Tuesday, March 9, 1999.

Dated: March 3, 1999.

Julia Moore,

Director, Office of Legislative and Public Affairs.

Y2K Millennium Readiness Poll

March 6–7, 1999

1. As you may know, most computer systems around the world have to be reprogrammed so that they can accurately recognize the date once we

reach the Year 2000. Do you think that computer mistakes due to the Year-2000 issue will cause major problems, minor problems, or no problems at all?

1 Major problems
2 Minor problems
3 No problems at all
4 No opinion

2. Do you think that computer mistakes due to the Year-2000 issue will cause major problems, minor problems or no problems at all for you personally?

1 Major problems
2 Minor problems
3 No problems at all
4 No opinion

3. How much have you seen or heard about the Year 2000 computer bug problem, sometimes called the Millennium Bug or the Y–2-K bug, before now—a great deal, some, not much, or nothing at all?

1 A great deal
2 Some
3 Not much
4 Nothing at all
5 No opinion

The rest of the questions on this survey will deal with Year 2000 computer issue. For convenience we will refer to it throughout the survey as the ''Y2K'' computer bug.

4. To the extent Y2K computer problems occur, how long do you think they will last—[FORM A: READ 1–4; FORM B: READ 4–1]?

1 For only a few days around January 1, 2000
2 For several weeks (or)
3 For several months to a year (or)
4 For more than a year
5 No opinion

6. For each of the following, please say whether that is something you probably will or will not do in order to protect yourself against problems associated with the Y2K computer bug. How about... [RANDOM ORDER]

1 Yes
2 No
3 No opinion

a. Obtain special confirmation or documentation of your bank account balances, retirement funds, or other financial records
b. Stockpile food and water
c. Buy a generator or wood stove
d. Withdraw all your money from the bank
e. Withdraw and set aside a large amount of cash
f. Avoid travelling on airplanes on or around January 1, 2000

9. Next I'm going to read some specific problems. As I read each one, please say whether you think it likely or unlikely to occur as a result of Y2K. First, . . . Next, . . .:

1 Likely
2 Unlikely
3 No opinion

a. Air traffic control systems will fail, putting air travel in jeopardy
b. Banking and accounting systems will fail, possibly causing errors in employee paychecks, government payments, and other automated financial transactions
c. Food and retail distribution systems will fail, possibly causing grocery and other store shortages
e. Hospital equipment and services will fail, putting patients at risk
h. Nuclear power or defense systems could fail, causing a major accident

10. As you may know, efforts are currently underway throughout the country to upgrade computer systems in order to correct the Y2K computer problem. We'd like to know whether you are generally confident or NOT confident that each of the following levels of government and business will have upgraded their computer systems before any Y2K problems can occur. How about... [RANDOM ORDER]

1 Yes, confident they will have upgraded
2 No, not confident
3 No opinion

a. The U.S. government, including all federal offices and agencies
b. Your state government
c. Your local government
d. U.S. corporations and large businesses
e. Small U.S. businesses
f. Foreign governments of other developed and industrialized countries
g. Foreign governments of Third World and other less developed countries

[FR Doc. 99–5785 Filed 3–8–99; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. STN 50–454]

Commonwealth Edison Company (Byron 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 for Facility Operating License No. NPF–37, issued to Commonwealth Edison Company (ComEd, the licensee), for operation of Byron Station, Unit 1, located in Ogle County, Illinois.

Environmental Assessment

Identification of Proposed Action

The proposed action would exempt ComEd from the requirements of 10 CFR 70.24, which require a monitoring system that will energize clear audible alarms if accidental criticality occurs in each area in which special nuclear material is handled, used, or stored. The proposed action would also exempt the licensee from the requirements to maintain emergency procedures for each area in which this licensed special nuclear material is handled, used, or stored to ensure that all personnel withdraw to an area of safety upon the sounding of the alarm, to familiarize personnel with the evacuation plan, and to designate responsible individuals for determining the cause of the alarm, and to place radiation survey instruments in accessible location for use in such an emergency.

The proposed action is in accordance with the licensee's application for exemption dated October 16, 1997.

The Need for the Proposed Action

The purpose of 10 CFR 70.24 is to ensure that if a criticality were to occur during the handling of special nuclear material, personnel would be alerted to that 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 handing operations. The special nuclear material that could be assembled into 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 on site in 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 design features that prevent inadvertent criticality, the staff has determined that it is unlikely that an inadvertent criticality could occur due to the handling of special nuclear material at a commercial power reactor. The requirements of 10 CFR 70.24, therefore, 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 actions and concludes that there is no significant environmental impact to Byron. Inadvertent or accidental criticality will be precluded through compliance with

the Byron Station Technical Specifications (TSs), the design of the fuel storage racks providing geometric spacing of fuel assemblies in their storage locations, and administrative controls imposed on fuel handling procedures. TSs requirements specify reactivity limits for the fuel storage racks and minimum spacing between the fuel assemblies in the storage racks.

Appendix A of 10 CFR Part 50, ''General Design Criteria for Nuclear Power Plants,'' (GDC) Criterion 62, requires that criticality in the fuel storage and handling system shall be prevented by physical systems or processes, preferably by use of geometrically-safe configurations. This is met at Byron Station, as identified in the Updated Final Safety Analysis Report (UFSAR). Byron Station UFSAR Section 9.1.1.1, New Fuel Storage—Design Basis, states that, ''* * * the new fuel storage racks are designed such that the effective multiplication factor does not exceed 0.95 with fuel of a maximum enrichment of 5.00 wt% u-235 in place, assuming the stored assemblies are completely submerged in unborated water at a conservative water temperature and with no credit for neutron poison in the fuel assembly.'' NUREG–0876, ''Safety Evaluation Report Related to the Operation of Byron Station, Units 1 and 2,'' dated February 1982, determined that the design of the Byron new fuel storage racks satisfied the requirements of GDC 62.

The proposed exemption would not result in any significant radiological impacts. The proposed exemption would not affect radiological plant effluents nor cause any significant occupational exposures since the TSs, design controls (including geometric spacing of fuel assembly storage spaces), and administrative controls preclude inadvertent criticality. The amount of radioactive waste would not be changed by the proposed exemption.

The proposed exemption does not result in any significant nonradiological environmental impacts. The proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant non-radiological environmental impacts associated the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed exemption, the staff considered denial of the requested exemption. Denial of the request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative are similar.

Alternative Use of Resources

The action does not involve the use of any resources not previously considered in the ''Final Environmental Statement Related to the Operation of Byron Station, Units 1 and 2'' dated April 1982.

Agencies and Persons Consulted

In accordance with its stated policy, on February 24, 1999, the staff consulted with the Illinois State official, Mr. Frank Niziolek, Head, Reactor Safety Section, Division of Engineering, Illinois Department of Nuclear Safety, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon 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 October 16, 1997, which is available for public inspection at the Commission's Public Document Room, which is located at the Gelman Building, 2120 L Street, NW., Washington, D.C., and at the local public document room located at the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010.

Dated at Rockville, Maryland, this 3rd day of March 1999.

For the Nuclear Regulatory Commission.

Stuart A. Richards,

Director, Project Directorate III–2, Division of Licensing Project Management Office of Nuclear Reactor Regulation.

[FR Doc. 99–5749 Filed 3–8–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of March 8, 15, 22, and 29, 1999.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of March 8

Wednesday, March 10

11:00 a.m. Affirmation Session (Public Meeting)
a: North Atlantic Energy Service Corp., et al. (Seabrook Station Unit 1) Docket No. 40–443, Draft Commission Memorandum and Order Addressing Intervention Petitions and Hearing Requests of New England Power Company (NEPCO) and United Illuminating Co. (tentative)

Week of March 15—Tentative

Tuesday, March 16

1:00 p.m. Briefing on Status of DOE High Level Waste Viability Assessment (Public Meeting) (Contact: Mike Bell, 301–415–7252)

Wednesday, March 17

9:00 a.m. Meeting with Advisory Committee on Nuclear Waste and Nuclear Waste Technical Review Board (Public Meeting) (Contact: John Larkins, 301–415–7360)
11:30 a.m. Affirmation Session (Public Meeting) (If needed)
1:30 p.m. Briefing on Part 40 Decommissioning Issues (Public Meeting) (Contact: Seymour Weiss, 301–415–2170)

Thursday, March 18

10:00 a.m. Briefing on Safeguards Performance Assessment and Design Basis Threat (Closed—ex. 1)
2:00 p.m. Briefing by Executive Branch (Closed—ex. 1)

Friday, March 19

9:00 a.m. Briefing on Status of External Regulation of DOE Facilities (Public Meeting) (Contact: Charlie Haughney, 301–415–7198)

Week of March 22—Tentative

Thursday, March 25

1:00 p.m. Briefing on Part 35 Rulemaking (Public Meeting) (Contact: Patricia Holahan, 301–415–8125)

Friday, March 26

9:00 a.m. Briefing on Proposed Reactor Oversight Process Improvements & Enforcement (Public Meeting) (Contact: William Dean, 301–415–2240)

12:30 p.m. Affirmation Session (Public Meeting) (If needed)

Week of March 29—Tentative

There are no meetings scheduled for the Week of March 29.

THE SCHEDULE FOR COMMISSION MEETINGS IS SUBJECT TO CHANGE ON SHORT NOTICE. TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 415–1292. CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

* * * * *

ADDITIONAL INFORMATION: By a vote of 5–0 on March 2, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Affirmation of Kansas Gas & Electric Corp., et al., (Wolf Creek Generating Station, Unit 1), Docket No. 50–482, Draft Commission Memorandum and Order Addressing Intervention Petition and Hearing Request of the Kansas Electric Power Cooperative'' (PUBLIC MEETING) be held on March 2, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: March 4, 1999.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 99–5858 Filed 3–5–99; 11:58 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[NUREG—1600, REV. 1]

Policy and Procedure for NRC Enforcement Actions; Interim Enforcement Policy for Generally Licensed Devices Containing Byproduct Material (10 CFR 31.5)

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its ''General Statement of Policy and Procedure for NRC Enforcement Actions,'' NUREG–1600, Rev. 1, by adding Appendix D to the policy. This amendment describes the interim enforcement policy that the NRC will follow to exercise enforcement discretion for certain violations of requirements in 10 CFR Part 31 for generally licensed devices containing byproduct material. It addresses violations that persons licensed pursuant to 10 CFR 31.5 identify and correct now, as well as during the initial cycle of the notice and response program contemplated by the proposed new requirements published in the **Federal Register** on December 2, 1998 (63 FR 66492), entitled ''Requirements for Those Who Possess Certain Industrial Devices Containing Byproduct Material to Provide Requested Information''.

DATES: This action is effective March 9, 1999. Comments on this interim enforcement policy should be submitted by April 8, 1999 and will be considered by the NRC prior to the next revision of the Enforcement Policy.

ADDRESSES: Submit written comments to David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop T6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm, Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW, (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, (301) 415–2741.

SUPPLEMENTARY INFORMATION:

Background

In a separate action published in the **Federal Register** on December 2, 1998 (63 FR 66492), the NRC is proposing to amend its regulations in 10 CFR Part 31 to provide for more frequent and timely contact between the NRC and users of certain industrial devices containing byproduct material that are licensed pursuant to the general license provisions of 10 CFR 31.5. The NRC is proposing this rule after concluding that there is a lack of awareness of NRC regulatory requirements on the part of the user of the general license (general licensee). In addition, there is evidence of inadequate handling of and accounting for generally licensed devices. Under the proposed rule, if finalized, the NRC intends to send notices to certain classes of persons licensed pursuant to the general license provisions of 10 CFR 31.5. These notices would require recipients to provide information to the NRC, as requested, concerning products that they have received under the general license.

For further information regarding these proposed new requirements, the reader is referred to the Statements of Consideration that accompany the proposed rule. As noted therein, the NRC anticipates that general licensees may discover violations of NRC regulatory requirements as a result of the proposed new requirement to respond to notices and provide information as requested. For example, general licensees who have not had contact with the NRC for many years may have failed to test for leakage of radioactive material from the generally licensed device, maintain the labels affixed to the device, or comply with the instructions and precautions in the labels. Additionally, general licensees may discover violations when copies of the proposed rule are mailed to them. For example, a general licensee that has changed its address of business may have abandoned or improperly transferred a generally licensed device during the process of moving. Under the current NRC Enforcement Policy published in NUREG–1600, Rev. 1., such violations normally would result in enforcement action.

Scope

This interim enforcement policy addresses violations that persons licensed pursuant to 10 CFR 31.5 discover and report before, as well as during, the initial cycle of the notice and response program contemplated by the proposed rule described above. It will remain in effect through at least July 1, 2000, by which time it is expected that one complete cycle of the notice and response program will be completed. However, any delays in completing the first cycle of notice and response will be taken into account, and the effective time period of this interim enforcement policy will be lengthened accordingly.

Under this interim enforcement policy, enforcement action normally will not be taken for violations of 10 CFR 31.5 if they are identified by the general licensee, and reported to the NRC if reporting is required, provided that the general licensee takes appropriate corrective action to address the specific violations and prevent

recurrence of similar problems and otherwise has undertaken good faith efforts to respond to NRC notices and provide requested information. This change from the Commission's normal enforcement policy is to remove the potential for the threat of enforcement action to be a disincentive for the licensee to identify deficiencies. This approach is warranted given the limited NRC inspections of general licensees. This approach is intended to encourage general licensees to determine if applicable requirements have been met, to search their facilities to assure that sources are located, and to develop appropriate corrective action when deficiencies are found. Under this interim enforcement policy, enforcement action, including issuance of civil penalties and Orders, may be taken where there is: (a) Failure to take appropriate corrective action to prevent recurrence of similar violations; (b) failure to respond and provide the information required by the notice and response program (if it becomes a final rule); (c) willful failure to provide complete and accurate information to the NRC; or (d) other willful violations, such as willfully disposing of generally licensed material in an unauthorized manner.

Paperwork Reduction Act

This policy statement amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These requirements have been approved by the Office of Management and Budget (OMB), control number 3150–0016.

Public Protection Notification

If an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a ''major'' rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

Accordingly, the NRC Enforcement Policy is amended by adding Appendix D as follows:

General Statement of Policy and Procedure for NRC Enforcement Actions

* * * * *

Appendix D: Interim Enforcement Policy for Generally Licensed Devices Containing Byproduct Material (10 CFR 31.5)

This Appendix sets forth the interim enforcement policy that the NRC will follow to exercise enforcement discretion for certain violations of requirements in 10 CFR Part 31 for generally licensed devices containing byproduct material. It addresses violations that persons licensed pursuant to 10 CFR 31.5 identify and correct now, as well as during the initial cycle of the notice and response program contemplated by the proposed new requirements published in the **Federal Register** on December 2, 1998 (63 FR 66492), entitled ''Requirements for Those Who Possess Certain Industrial Devices Containing Byproduct Material to Provide Requested Information''.

Exercise of Enforcement Discretion

Under this interim enforcement policy, enforcement action normally will not be taken for violations of 10 CFR 31.5 if they are identified by the general licensee, and reported to the NRC if reporting is required, provided that the general licensee takes appropriate corrective action to address the specific violations and prevent recurrence of similar problems and otherwise has undertaken good faith efforts to respond to NRC notices and provide requested information.

Exceptions

Enforcement action may be taken where there is: (a) failure to take appropriate corrective action to prevent recurrence of similar violations; (b) failure to respond and provide the information required by the notice and response program (if it becomes a final rule); (c) willful failure to provide complete and accurate information to the NRC; or (d) other willful violations, such as willfully disposing of generally licensed material in an unauthorized manner. Enforcement sanctions in these cases may include civil penalties as well as Orders to modify or revoke the authority to possess radioactive sources under the general license.

Dated at Rockville, Maryland, this 3rd day of March, 1999.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–5748 Filed 3–8–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Commercial Radiopharmacy Licenses, Availability of Draft NUREG

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of availability and request for comments.

SUMMARY: The NRC is announcing the availability of and requesting comment on draft NUREG–1556, Volume 13, ''Consolidated Guidance about Materials Licenses: Program-Specific Guidance about Commercial Radiopharmacy Licenses,'' dated December 1998.

NRC is using Business Process Redesign (BPR) techniques to redesign its materials licensing process, as described in NUREG–1539, ''Methodology and Findings of the NRC's Materials Licensing Process Redesign.'' A critical element of the new process is consolidating and updating numerous guidance documents into a NUREG-series of reports. This draft NUREG report is the 13th program-specific guidance developed to support an improved materials licensing process.

The guidance is intended for use by applicants, licensees, NRC license reviewers, and other NRC personnel. This document combines and updates the guidance found in ''Draft Regulatory Guide DG–0006'' (previously issued as FC 410–4), ''Guide for the Preparation of Applications for Commercial Nuclear Pharmacy Licenses'' (March 1997), and Standard Review Plan 85–14, ''Standard Review Plan for Applications for Nuclear Pharmacy Licenses.'' This draft report takes a more risk-informed, performance-based approach to licensing commercial radiopharmacies and reduces the information (amount and level of detail) needed to support an application to use these devices. Note that this document is strictly for public comment and is not for use in preparing or reviewing commercial radiopharmacy licenses until it is published in final form. It is being distributed for comment to encourage public participation in its development.

DATES: The comment period ends June 7, 1999. Comments received after that time will be considered if practicable.

ADDRESSES: Submit written comments to: 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 7:15 a.m. and 4:30 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 13, 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 13, 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.

The Presidential Memorandum dated June 1, 1998, entitled, ''Plain Language in Government Writing,'' directed that the Federal government's writing be in plain language. The NRC requests comments on this licensing guidance NUREG specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed above.

FOR FURTHER INFORMATION, CONTACT: Mrs. Sally L. Merchant, Mail Stop TWFN 9–F–31, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material 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. 13 is available electronically by visiting NRC's Home Page (http://www.nrc.gov/NRC/nucmat.html).

Dated at Rockville, Maryland, this 3rd day of March, 1999.

For the Nuclear Regulatory Commission.

Patricia K. Holahan,

Acting Chief, Rulemaking and Guidance Branch, Division of Industrial and Medical Nuclear Safety, NMSS

[FR Doc. 99–5750 Filed 3–8–99; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee Open Committee Meetings

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, March 18,1999

Thursday, April 8, 1999

Thursday, April 22, 1999

Thursday, May 6, 1999

Thursday, May 20, 1999

Thursday, June 10, 1999

Thursday, June 24, 1999

The meetings will start at 10:00 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meetings either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on this meeting may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5559, 1900 E Street, NW., Washington, DC 20415 (202) 606–1500.

Dated: March 3, 1999.

John F. Leyden,

Chairman, Federal Prevailing Rate, Advisory Committee.

[FR Doc. 99–5760 Filed 3–8–99; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41119; File No. SR–Amex–98–34]

Self-Regulatory Organization; American Stock Exchange LLC; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 3 and 4 to the Proposed Rule Change Relating to the Listing and Trading of Shares of the Nasdaq-100 Trust

February 26, 1999.

I. Introduction

On September 21, 1998, The American Stock Exchange LLC (''Amex'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade under Amex Rules 1000 *et seq.*, Nasdaq-100® Shares, units of beneficial interest in the Nasdaq-100® Trust. The proposed rule change and Amendment Nos. 1 and 2[3] were published for comment in the **Federal Register** on December 18, 1998.[4] On February 5, 1999 and February 24, 1999, the Exchange filed Amendment Nos. 3[5] and 4,[6] respectively. No comments were received on the proposal. This order approves the proposed rule filing as amended.[7]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange filed Amendment No. 1 to the original proposal to clarify the nature and operation of the Nasdaq-100 Trust shares (''Amendment No. 1''). *See* Letter from Geraldine M. Brindisi, Vice President and Corporate Secretary, Amex, to Michael Walinskas, Market Regulation, Commission, dated December 16, 1998. In Amendment No. 2, the Exchange discusses the basis for the mandatory termination date of the Trust. (''Amendment No. 2''). *See* Letter from Mike Cavalier, Associate General Counsel, Legal and Regulatory Policy, Amex, to Hong-anh Tran, Staff Attorney, Market Regulation, Commission, dated December 16, 1998.

[4] Securities Exchange Act Release No. 40809 (December 18, 1998), 63 FR 71524 (December 28, 1998).

[5] In Amendment No. 3, the Exchange discusses, among other things, the real-time information that will be available regarding the Nasdaq-100 Trust shares (''Amendment No. 3). *See* Letter from Michael Cavalier, Associate General Counsel, Legal & Regulatory Policy, Amex, to Katherine England, Assistant Director, Market Regulation, Commission, dated February 5, 1999.

[6] In Amendment No. 4, the Exchange amends the product description; provides the new name of the Trust Shares Sponsor, and discusses the proposed Amex Rule 1006 (''Amendment No. 4'') *See* Letter from James Duffy, Amex, to Katherine A. England, Assistant Director, Market Regulation, Commission, dated February 22, 1999.

[7] This order is granting approval for Nasdaq-100 Trust shares to be listed and traded on the Amex.

II. Description

On December 11, 1992,[8] the Commission approves Amex Rules 1000 *et seq.* to accommodate trading on the Exchange of Portfolio Depositary Receipts℠ (''PDRs''), securities which represent interests in a unit investment trust (''Trust'') operating on an open-end basis and that hold a portfolio of securities.[9] Each Trust is intended to provide investors with an instrument that closely tracks the underlying securities portfolio, that trades like a share of common stock, and that pays to PDR holders periodic dividends proportionate to those paid with respect to the underlying portfolio of securities, less certain expenses, as described in the applicable Trust prospectus. The first Trust to be formed in connection with the issuance of PDRs was based on the Standard & Poor's 500 Index (''S&P 500 Index''), known as Standard & Poor's Depositary Receipts® (''SPDRs''), which have been trading on the Exchange since January 29, 1993.[10] In 1995, the Commission approved Amex's listing and trading of PDRs based on the Standard & Poor's MidCap 400 Index (''MidCap SPDRs'').[11] In January 1998, the Commission approved the listing and trading of PDRs based on the Dow Jones Industrial Average℠ (''DIAMONDS'') [12]

The Exchange now proposes to list and trade under Rules 1000 *et seq.* Nasdaq-100 Shares (referred to herein as ''Trust shares''), units of beneficial interest in the Nasdaq-100 Trust, Series 1, a unit investment trust based on the Nasdaq-100 Index® (''Nasdaq-100 Trust'' or ''Trust'').[13] The Trust Sponsor, Nasdaq-Amex Investment Product Services, Inc.,[14] which is wholly-owned by The Nasdaq Stock Market, Inc. (''Nasdaq''), will enter into a trust agreement with The Bank of New York as trustee (the ''Trustee'') in accordance with Section 26 of the Investment Company Act of 1940.[15] A distributor, Alps Mutual Funds, Inc., will act as underwriter of the Nasdaq-100 Trust on an agency basis.[16] All orders to create Trust shares in Creation Unit size aggregations must be placed with the distributor, and it will be the responsibility of the distributor to transmit the orders to the Trustee. The distributor is a registered broker-dealer and a member of the National Association of Securities Dealers, Inc.

The Nasdaq-100 Index®[17]

The Nasdaq-100 Index® (''Index'') constitutes a clearly diversified segment of the largest and most actively traded securities listed on the Nasdaq Stock Market. Additionally, the Index has achieved wide acceptance by both investors and market professionals. Specifically, the Index is composed of 100 of the largest and most actively traded non-financial companies listed on the Nasdaq National Market tier of the Nasdaq Stock Market.

The Index was first published in January 1985, and includes companies across a variety of major industry groups. The major industry groups covered in the Index are: computer and office equipment, computer and software/services, telecommunications, retail/wholesale trade, and biotechnology.[18] The five largest companies represented in the Index as of December 14, 1998, are as follows: Microsoft Corporation, Intel Corporation, Cisco Systems Inc., Dell Computer Corporation, and MCI WORLDCOM, Inc. Current information regarding the market value of the Index is available from Nasdaq as well as numerous market information services. The Index is determined, composed, and calculated by Nasdaq without regard to the Trust.

At any moment in time, the value of the Index equals the aggregate value of the then-current Index share weights (described below) of each of the component 100 securities in the Index (the ''Index Securities) multiplied by each such security's respective last sale price on the Nasdaq Stock Market, and divided by a scaling factor (the ''divisor'') which becomes the basis for the reported Index value. The divisor serves the purpose of scaling such aggregate value (otherwise in the hundreds of billions) to a lower order of magnitude which is more desirable for Index reporting purposes.[19]

The Index share weights of the component securities of the Index at any time are based upon the total shares outstanding in each of the 100 Index Securities and will be additionally subject (prior to the issuance of Trust shares) to rebalancing to ensure that the relative weighting of the Index Securities continues to meet minimum pre-established requirements for a diversified portfolio (*see* ''Rebalancing of the Index''). Accordingly, each Index Security's influence on the value of the Index is directly proportional to the

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If at a subsequent date, Trust shares are to be listed and traded on another national securities exchange or a quotation medium operated by a national securities association, such self-regulatory organization (''SRO'') must contact the Commission to determine if it must file, pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder, a proposed rule change for such listing and trading.

[8] *See* Securities Exchange Act Release No. 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992) (''SPDRs Order'').

[9] ''PDRs'' is a service mark of PDR Services LLC, a wholly-owned subsidiary of the Exchange.

[10] *See* SPDRs Order, *supra* note 8.

[11] *See* Securities Exchange Act Release No. 35534 (March 24, 1995), 60 FR 16686 (March 31, 1995) (''MidCap SPDRs Order''). ''Standard & Poor's 500,'' ''Standard & Poor's MidCap 400 Index,'' ''Standard & Poor's Depositary Receipts,''® ''SPDRs,''® ''Standard & Poor's MidCap 499 Depositary Receipts'' and ''MidCap SPDRs'' are trademarks of The McGraw-Hill Companies, Inc. and are being used by the Exchange and the Sponsor under license among Standard & Poor's, a division of The McGraw-Hill Companies, Inc., the Exchange and the Sponsor. ''SPDRs'' and ''MidCap SPDRs'' are not sponsored, endorsed, sold, or promoted by S&P, and S&P makes no representation regarding the advisability of investing in SPDRs or MidCap SPDRs.

[12] *See* Securities Exchange Act Release No. 39525 (January 8, 1998), 63 FR 2438 (January 15, 1998) (''DIAMONDS Order''). ''Dow Jones Industrial Average,''℠ ''DJIA,''℠ ''Dow Jones''℠ and ''DIAMONDS'' are each trademarks and service marks of Dow Jones & Company, Inc. (''Dow Jones'') and have been licensed for use for certain purposes by the Exchange and the Sponsor. DIAMONDS are not sponsored, endorsed, sold or promoted by Dow Jones, and Dow Jones makes no representation regarding the advisability of investing in such product. The Sponsor for the SPDR, MidCap SPDR, and DIAMONDS Trust is PDR Services LLC.

[13] The ''Nasdaq-100 Index,''® ''Nasdaq-100,''® ''Nasdaq,''® and ''The Nasdaq Stock Market''® are trademarks of Nasdaq and have been licensed for use for certain purposes by Investment Product Services, Inc. pursuant to a License Agreement and Nasdaq. The specific name of the Trust and units of beneficial interest based on the Nasdaq-100 Index are subject to change and any such change will be filed with the Commission as an amendment hereto.

[14] *See* Amendment No. 4, *supra* note 6.

[15] An Application for Orders pursuant to Section 6(c) of the Investment Company Act of 1940 (''1940 Act'') has been filed with respect to the Trust (the ''Application''). In the interest of facilitating secondary market transactions in Trust shares, the Application seeks, among other things, an order (1) permitting secondary market transactions in Trust shares at negotiated prices rather than at a current public offering price described in the prospectus and based on current net asset value as required by Section 22(d) of the 1940 Act and Rule 22c–1 thereunder, and (2) permitting the sale of Trust shares to purchasers in the secondary market unaccompanied by a prospectus, when prospectus delivery is not required by Section 4(3) of the Securities Act of 1933 but may be required according to Section 24(d) of the 1940 Act for redeemable securities issued by a unit investment trust. In addition a registration statement on Form S–6, including a preliminary prospectus for the Trust (No. 333–61001), has been filed with the Commission. These exemption, if granted, will permit individual Trust shares to be traded in secondary market transactions similar to a closed end investment company. Both the Application and the registration statement provide additional detail relating to a number of the procedures referenced in SR–Amex–98–34.

[16] *See* Amendment No. 4, *supra* note 6.

[17] The description of the Nasdaq-100 Index herein as well as discussion of eligibility criteria, annual ranking review, ongoing index administration, and index rebalancing are based on materials prepared by The Nasdaq Stock Market.

[18] *See* Amendment No. 4, *supra* note 6.

[19] For example, on November 12, 1998, the aggregate value of the then-current Index share weights of each of the Index Securities multiplied by their respective last sale price on the Nasdaq Stock Market was $1,218,098,456,568, the divisor was 830,593,408, and the reported Index value was 1,466.54.

value of its Index share weight. At any time at which the composition and/or Index share weights are adjusted as described herein, a new divisor will be determined and become effective so as to offset the change in aggregate value of the Index Securities in order to ensure the continuity of the value of the Index in connection with such adjustment.

Index Security Eligibility Criteria and Annual Ranking Review

To be eligible for inclusion in the Index, a security must be traded on the Nasdaq National Market tier of the Nasdaq Stock Market and meet the following criteria:

- The security must be of a non-financial company;
- Only one class of security per issuer is allowed;
- The security may not be issued by an issuer currently in bankruptcy proceedings;
- The security must have average daily trading volume of at least 100,000 shares per day;
- The security must have ''seasoned'' on the Nasdaq Stock Market or another recognized market (generally, a company is considered to be seasoned by Nasdaq if it has been listed on a market for at least two years; in the case of spin-offs, the operating history of the spin-off will be considered);
- If a security would otherwise qualify to be in the top 25% of the issuers included in the Index by market capitalization, then a one year ''seasoning'' criteria would apply; [20]
- If the security is of a foreign issuer, the company must have a worldwide market value of at least $10 billion, a U.S. market value of at least $4 billion, and average trading volume on the Nasdaq Stock Market of at least 200,000 shares per day; in addition, foreign securities must be eligible for listed options trading; and
- The issuer of the security may not have entered into a definitive agreement or other arrangement which would result in the security no longer being listed on the Nasdaq Stock Market within the next six months.[21]

The Index Securities are evaluated annually based on market data as of the end of October as follows (''Annual Ranking Review''). Securities listed on the Nasdaq Stock Market which meet the above eligibility criteria are ranked by market value as of the end of October. Index-eligible securities which are already in the Index and which are in the top 150 eligible securities (based on market value) are retained in the Index provided that such security was ranked in the top 100 eligible securities as of the previous year's annual review. Securities not meeting the criteria are replaced. The replacement securities chosen are those Index-eligible securities not currently in the Index which have the largest market capitalization. The list of annual additions and deletions is publicly announced via a press release in the early part of December. Replacements are made effective after the close of trading on the third Friday in December. Moreover, if at any time during the year an Index Security is no longer traded on the Nasdaq Stock Market, or is otherwise determined by Nasdaq to become ineligible for continued inclusion in the Index, the security will be replaced with the largest market capitalization security not currently in the Index and meeting the Index eligibility criteria listed above.

Ongoing Index Administration

In addition to the Annual Ranking Review, the securities in the Index are monitored every day by Nasdaq with respect to changes in total shares outstanding arising from secondary offerings, stock repurchases, conversions, or other corporate actions. Periodically (typically, several times per quarter), Nasdaq may determine that total shares outstanding have changed in one or more Index Securities as a result of such events and Nasdaq has adopted the following quarterly scheduled weight adjustment procedures with respect to such changes. If the change in total shares outstanding arising from such corporate action is greater than or equal to 5.0%, such change is ordinarily made to the Index on the evening prior to the effective date of the corporate action. Otherwise, if the change in total shares outstanding is less than 5.0%, then all the changes are accumulated and made effective at one time on a quarterly basis after the close of trading on the third Friday in each of March, June, September, and December. In either case, the Index Share weights for such Index Securities are adjusted by the same percentage amount by which the total shares outstanding have changed in the Index Securities. Ordinarily, whenever there is a change in Index share weights or a change in a component security included in the Index, Nasdaq adjusts the divisor to assure that there is no discontinuity in the value of the Index which might otherwise be caused by any such change.

As noted above, Nasdaq may also during each quarter (ordinarily, several times per quarter) replace one or more component securities in the Index due to mergers, acquisitions, bankruptcies, or due to delistings if an issuer chooses to list its securities on another marketplace, or if the issuers of the component securities fail to meet the eligibility criteria for continued inclusion in the Index.

Rebalancing of the Index

Effective on December 18, 1998, the Index will be calculated under a ''modified capitalization weighted'' methodology, which is a hybrid between equal weighting and conventional capitalization weighting. This methodology is expected to: (1) retain in general the economic attributes of capitalization weighting; (2) promote portfolio weight diversification (thereby limiting domination of the Index by a few large stocks); (3) reduce Index performance distortion by preserving the capitalization ranking of companies; and (4) reduce market impact on the smallest component securities form necessary weight rebalancings.

Specifically, on a quarterly basis coinciding with Nasdaq's quarterly scheduled weight adjustment procedures (*see* ''Ongoing Index Administration''), the Index Securities are categorized as either ''Large Stocks'' or ''Small Stocks'' depending on whether their current percentage weights (after taking into account such scheduled weight adjustments due to stock repurchases, secondary offerings, or other corporate actions) are greater than, or less than or equal to, the average percentage weight in the Index (*i.e.*, as a 100-stock index, the average percentage weight in the Index is 1.0%).

Such quarterly examination will result in an index rebalancing if either one or both of the following two weight distribution requirements are not met: (1) the current weight of the single largest market capitalization stock in the Index must be less than or equal to 24.0% and (2) the ''collective weight'' of those stocks whose individual current weights are in excess of 4.5%, when added together, must be less than or equal to 48.0%.

If either one or both of these weight distribution requirements are not met upon quarterly review, a weight rebalancing will be performed in accordance with the following plan. First, relating to weight distribution requirement (1) above, if the current weight of the single largest stock in the Index exceeds 24.0%, then the weights

[20] *See* Preliminay Prospectus for Nasdaq-100 Trust, Series 1, at 38 (January 28, 1999).

[21] *See* Preliminary Prospectus for Nasdaq-100 Trust, Series 1, at 38 (January 28, 1999).

of all Large Stocks will be scaled down proportionately towards 1.0% by enough for the adjusted weight of the single largest stock to be set to 20.0%. Second, relating to weight distribution requirement (2) above, for those stocks whose individual current weights or adjusted weights in accordance with the preceding step are in excess of 4.5%, if their ''collective weight'' exceeds 48.0%, then the weights of all Large Stocks will be scaled down proportionately towards 1.0% by just enough for the ''collective weight,'' so adjusted, to be set to 40.0%.[22]

The aggregate weight reduction among the Large Stocks resulting from either or both of the above rescalings will then be redistributed to the Small Stocks in the following iterative manner. In the first iteration, the weight of the largest Small Stock will be scaled upwards by a factor which sets it equal to the average index weight of 1.0%. The weights of each of the smaller remaining Small Stocks will be scaled up by the same factor reduced in relation to each stock's relative ranking among the Small Stocks such that the smaller the stock in the ranking, the less the scale-up of its weight. This is intended to reduce the market impact of the weight rebalancing on the smallest component securities in the Index.

In the second iteration, the weight of the second largest Small Stock, already adjusted in the first iteration, will be scaled upwards by a factor which sets it equal to the average index weights of 1.0%. The weights of each of the smaller remaining Small Stocks will be scaled up by this same factor reduced in relation to each stock's relative ranking among the Small Stocks such that, once again, the smaller the stock in the ranking, the less the scale-up of its weight.

Additional iterations will be performed until the accumulated increase in weight among the Small Stocks exactly equals the aggregate weight reduction among the Large Stocks from rebalancing in accordance with weight distribution requirement (1) and/or weight distribution requirement (2) above.

To complete the rebalancing procedure, once the final percent weights of each stock in the Index are set, the Index share weights will be determined anew based upon the last sale prices and aggregate capitalization of the Index at the close of trading on the Thursday in the week immediately preceding the week of the third Friday in March, June, September, and December. Changes to the Index share weights will be made effective after the close of trading on the third Friday in March, June, September, and December and a corresponding adjustment to the Index divisor will be made to ensure continuity of the Index. Such changes to the Index share weights would result either from (1) adjustments to reflect changes in total shares outstanding in one or more Index Securities made during Nasdaq's quarterly scheduled weight adjustment procedures (*see* ''Ongoing Index Administration''), (2) changes effective in the quarter ending in December in connection with the Annual Ranking Review (*see* ''Index Security Eligibility Criteria and Annual Ranking Review''); or (3) changes based on the rebalancing of the Index in accordance with procedures described above.[23]

The Nasdaq-100 Trust

To be eligible to place orders to create Trust shares, as described below, an entity or person must either be a participant in the Continuous Net Settlement (''CNS'') system of the National Securities Clearing Corporation (''NSCC'') or a Depository Trust company (''DTC'') participant. Upon acceptance of an order to create Trust shares, the distributor will instruct the Trustee to initiate the book-entry movement of the appropriate number of Trust shares to the account of the entity placing the order. Trust shares will be registered in book entry only, which records will be kept by DTC.

Payment with respect to creation orders placed through the distributor will be made by (1) the ''in-kind'' deposit with the Trustee of a specified portfolio of securities that is substantially similar in composition to the component shares of the underlying index or portfolio; and, in addition, (2) an amount equal to the ''Income Net of Expense Amount,'' plus or minus, as the case may be, the ''Balancing Amount.'' The ''Income Net Expense Amount'' is an amount equal, on a per Creation Unit basis, to the dividends accumulated in respect of the securities held in the Trust from the most recent ex-dividend date for Trust shares through and including the day on which the creation order is placed, net of accrued expenses and liabilities of the Trust for such period. The ''Balancing Amount'' serves the function of compensating for any differences between (1) the value of the portfolio of securities deposited with the Trustee in connection with a creation of Trust shares, together with the Income Net of Expense Amount, and (2) the net asset value of the Trust on a per Creation Unit basis. The ''Income Net of Expense Amount'' and the ''Balancing Amount'' are collectively referred to as the ''Cash Component'' in the Trust Application and registration statement, and the deposit of a specified portfolio of securities (as referenced above) and the Cash Component are collectively referred to as a ''Portfolio Deposit.'' On any given day, the Cash Component of the Portfolio Deposit may be payable either by the Trustee on behalf of the Trust to the creator of Trust shares, or by the creator of Trust shares to the Trustee on behalf of the Trust, depending on the respective amounts of the ''Income Net of Expense Amount'' and the ''balancing Amount.''

In connection with redemptions of Creation Unit size aggregations of Trust shares, the redeeming party receives a portfolio of securities typically identical in composition and weighting to the securities portion of a Portfolio Deposit as in effect on the date a request for redemption is deemed received by the Trustee, in addition, in certain cases, to a ''Cash Redemption Amount'' (as defined in the Trust prospectus) which is typically identical to the amount of the ''Cash Component,'' as in effect on such date. The ''Cash Redemption Amount'' will either be paid to the Trustee on behalf of the Trust by the redeemer or paid to the redeemer by the Trustee on behalf of the Trust, again depending upon the respective amounts of the ''Income Net of Expense Amount'' and the ''Balancing Amount,'' as described in the Trust prospectus.

The mandatory termination date of the Trust will be the first to occur of (i) a date in 2124[24] or (ii) the date 20 years after the death of the last survivor of 15 specified persons named in the Trust Agreement between the Trust Sponsor and the Trustee, the oldest of whom was

[22] By applying the weight rebalancing methodology, the Trust is able to meet, among other things, certain diversification tests which enable the Trust to maintain its tax treatment as a ''regulated investment company'' under Subchapter M of the Internal Revenue Code of 1986, as amended.

[23] Effective on December 21, 1998, Nasdaq will be maintaining two versions of the Nasdaq-100 Index, calculated based on (1) conventional capitalization weighting and (2) modified capitalization weighting. Nasdaq-100 Index options listed for trading on the Chicago Board Options Exchange (''CBOE'') prior to December 21, 1998, (whose expiration dates extend as far out as March 1999) will continue to be based on the conventional capitalization weighted version. Nasdaq-100 Index options listed for trading on the CBOE on or after December 21, 1998, will be based on the modified capitalization weighted version. After expiration of March index option contracts on March 20, 1999, the Index version based on the conventional weighting method will no longer be calculated. At all times, the Trust intends to replicate the composition and weighting of the Nasdaq-100 Index based on the modified capitalization weighting method.

[24] *See* Amendment No. 4, *supra* note 6.

born in 1986 and the youngest of whom was born in 1996.[25]

Issuance

Upon receipt of a Portfolio Deposit in payment for a creation order placed through the distributor as described above, the Trustee will issue a specified number of Trust shares, this aggregate number is referred to as a ''Creation Unit.'' The Exchange anticipates that, with respect to the Nasdaq-100 Trust, a Creation Unit will be made up of 50,000 Trust shares.

Individual Trust shares can then be traded in the secondary market like other equity securities. It is expected that Portfolio Deposits will be made primarily by institutional investors, arbitrageurs and the Exchange specialist. The Trust has been structured to provide for the initial issuance of Trust shares at a per share price which would approximate 1/20th of the prevailing value of the Nasdaq–100 Index. As of November 12, 1998, it is estimated that the value of an individual Trust share would be approximately $74 (1/20th of the prevailing value of the Index on such date).

The Trust Sponsor, Investment Product Services, Inc., intends to make available itself, or by other persons designated to do so by the Sponsor, a list of the names and the required number of shares for each of the securities in the current Portfolio Deposit. The Trust Sponsor also intends to make available through the facilities of the Amex on each business day the Income Net of Expense Amount effective through and including the previous business day per outstanding Trust share. The Sponsor may also choose within its discretion to make available, frequently throughout each business day, a number representing, on a per Trust share basis, the sum of the Income Net of Expense Amount effective through and including the previous business day plus the current value of the securities portion of a Portfolio Deposit as in effect on such day (which value will occasionally include a cash-in-lieu amount to compensate for the omission of a particular Index Security from such Portfolio Deposit). If the Sponsor elects to make such information available, it would be calculated based upon the best information available to the Sponsor and may be calculated by other persons designated to do so by the Sponsor (*e.g.*, the Amex).[26] In addition, the Trustee will make available to NSCC prior to commencement of trading on each business day a list of the names and required number of shares of each of the Index Securities in the current Portfolio Deposit as well as the Income Net of Expense Amount for the previous business day.

Transactions in Trust shares may be effected on the Exchange until 4:15 p.m. New York time each business day. The minimum fractional change for Trust shares shall be 1/64 of $1.00.

Redemption

Trust shares in Creation Unit size aggregations generally will be redeemable in kind[27] by tendering them to the Trustee. While holders may sell Trust shares in the secondary market at any time, they must accumulate at least 50,000 (or multiples thereof) to redeem through the Trust. Trust shares will remain outstanding until redeemed or until the termination of the Trust. Creation Unit size aggregations of Trust shares generally will be redeemable on any business day in exchange for a portfolio of the securities held by the Trust typically identical in composition and weighting to the securities portion of a Portfolio Deposit in effect on the date request is made for redemption, together, in certain cases, with a ''Cash Redemption Amount'' as referred to above), including accumulated dividends, less accrued expenses and liabilities of the Trust, through the date of redemption, which will either be paid to the Trustee by the redeemer or paid to the redeemer by the Trustee on behalf of the Trust depending upon the respective amounts of the ''Income Net of Expense Amount,'' and the ''Balancing Amount,'' as described previously. The number of shares of each of the securities transferred to the redeeming holder generally will be the number of shares of each of the component stocks in a Portfolio Deposit on the day a redemption notice is received by the Trustee, multiplied by the number of Creation Units being redeemed. Nominal service fees may be charged in connection with the creation and redemption of Creation Units. The Trustee will cancel all Trust shares delivered upon redemption.

The Trustee, in its discretion, upon the request of the redeeming investor, may redeem Creation Units in whole or in part by providing the redeemer with a portfolio of securities differing in exact composition and weighting from the Index Securities but not differing in net asset value from the then current net asset value of Trust shares. Such a redemption is likely to be made only if it were to be determined that this composition would be appropriate in order to maintain the portfolio of the Trust in correlation to the composition and weighting of the Index, for instance, in connection with a replacement of one of the Index Securities (*e.g.*, due to a merger, acquisition, or bankruptcy, or in connection with the rebalancing of the Index).

Distributions

Distributions by the Trust will be made quarterly in the event that dividends accumulated in respect of the Trust securities and other income, if any, received by the Trust, exceed Trust fees and expenses accrued during the quarter. Based on historical dividend payment rates of the portfolio of stocks comprising the Index and estimated ordinary operating expenses of the Trust, little or no such distributions are currently anticipated. The regular quarterly Ex-Dividend Date with respect to net dividends, if any, for the Trust will be the third Friday in each of March, June, September, and December, unless such day is not a business day, in which case the Ex-Dividend Date will be the immediately preceding business day. However, there shall be no net dividend distribution in any given quarter, and any net dividend amounts will be rolled into the next quarterly accumulation period, if the aggregate net dividend distribution would be in an amount less than 5/100 of one percent (0.05%) of the net asset value of the Trust as of the Friday in the week immediately preceding the Ex-Dividend Date, unless the Trustee determines that such net dividend distribution is required to be made in order to maintain the Trust's status as a regulated investment company or to avoid the imposition of income or excise taxes on undistributed income.

[25] The SEC staff notes that Amex has stated that the basis of the mandatory termination date of the Trust is to comply with the common law rule against perpetuities which provides, in brief, that no estate is valid unless it vests not later than twenty-one years after lives in being at the creation of the estate, and that any future or present estate is void in its creation if it suspends the absolute power of alienation longer than this period. *See* Amendment No. 2, *supra* note 3.

[26] *See* Amendment No. 3, *supra* note 5.

[27] The Trustee shall have the discretion to deliver the cash equivalent value of an Index security or Index securities, based on the market value of such Index security or securities as of the Evaluation Time on the date such redemption is deemed received by the Trustee, as a part of the Cash Redemption Payment in lieu of delivering the Index security or securities if: (1) the Trustee determines in its discretion that an Index security is likely to be unavailable or available in insufficient quantity for delivery by the Trust upon redemption; or (2) a redeeming investor requests redemption in cash with respect to one or more Index securities, if, for example, the redeemer is restricted by regulation or otherwise from investing or engaging in a transaction in one or more Index securities. *See* Preliminary Prospectus for Nasdaq-100 Trust, Series 1, at 6 (January 28, 1999).

Beneficial owners as reflected on the records of the Depository and the DTC Participants on the second business day following the ex-dividend date (the ''record date'') are entitled to receive an amount, if any, representing dividends accumulated through the quarter, net of the fees and expenses of the Trust, accrued daily for the period. For the purposes of such distributions, dividends per Trust share are calculated at least to the nearest 1/100th of $0.01. When net dividend payments are to be made by the Trust, payment will be made on the last business day in the calendar month following each Ex-Dividend Date (the ''Dividend Payment Date''). Dividend payments will be made through the Depository and the DTC Participants to Beneficial Owners then of record with funds received from the Trustee. The Sponsor reserves the right to make the DTC Dividend Reinvestment Service (the ''Service'') available in the future for use by Trust shareholders through DTC Participants for reinvestment of their periodic cash distributions, if any. In the event the Service is made available, not all DTC Participants may choose to utilize this Service and an interested investor would have to consult his or her broker to ascertain the availability of dividend reinvestment through such broker, as well as applicable procedures.

Criteria for Initial and Continued Listing

Because of the open-end nature of the Trust upon which a series of PDRs is based, the Exchange believes it is necessary to maintain appropriate flexibility in connection with listing a specific Trust. In connection with initial listing, the Exchange will establish a minimum number of PDRs required to be outstanding at the time of commencement of Exchange trading. For Trust shares, it is anticipated that a minimum of 150,000 Trust shares (*i.e.*, three Creation Units of 50,000 Trust shares each), will be required to be outstanding when trading begins.

The Trust will be subject to the initial and continued listing criteria of Rule 1002(b). Rule 1002(b) provides that, following twelve months from the formation of a trust and commencement of Exchange trading, the Exchange will consider suspension of trading in, or removal from listing of a trust when, in its opinion, further dealing in such securities appears unwarranted under the following circumstances:

(a) if the trust has more than 60 days remaining until termination and there have been fewer than 50 record and/or beneficial holders of the PDRs for 30 or more consecutive trading days; or

(b) if the index on which the trust is based is no longer calculated; or

(c) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

A trust terminate upon removal from Exchange listing and its PDRs shall be redeemed in accordance with provisions of the trust prospectus. A trust may also terminate under such other conditions as may be set forth in the trust prospectus. For example, the Sponsor, following notice to Trust shareholders, shall have discretion to direct that the Trust be terminated if the value of securities in the Trust is below a specified amount. The Trust may also terminate if the license agreement with Nasdaq terminates.[28]

Listing Fee[29]

The Trust will not pay a listing fee to the Amex in connection with the listing of Nasdaq-100 Shares on the Amex.

Trading Halts

Prior to commencement of trading in Trust shares, the Exchange will issue a circular to members informing them of Exchange policies regarding trading halts in such securities. The circular will make clear that, in addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Rule 918C(b) in exercising its discretion to halt or suspend trading in PDRs, including Trust shares. These factors include, but are not limited to (1) the extent to which trading is not occurring in stocks underlying the Index; and (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[30]

In addition, trading in Trust shares will be halted if the circuit breaker parameters under Amex Rule 117 have been reached. The triggering of futures price limits for index futures contracts such as Nasdaq 100 Index futures, will not, in itself, require a halt in Trust shares trading or a delayed opening. However, such an event could be considered by the Exchange along with other factors, such as a halt in Nasdaq-100 or other broad-based index options trading, in deciding to halt trading in Trust shares or other index-based derivative securities.

Dissemination of Information by the Exchange[31]

The Amex, on behalf of the Trust Sponsor, will disseminate every 15 seconds during each business day a number (under symbol QXV) representing, on a per Nasdaq-100 Share basis, the sum of the Income Net of Expense Amount effective through and including the previous business day, plus the current value of the securities portion of a Portfolio Deposit as in effect on the day (the ''Value'') (which value will occasionally include a cash-in-lieu amount to compensate for the omission of a particular Index security from the Portfolio Deposit). In addition, the Exchange, on behalf of the Trust Sponsor, will disseminate each business day the Income Net of Expense Amount effective through and including the previous business day per outstanding Trust share (symbol: QND).

Terms and Characteristics

Under Amex Rule 1000, Commentary .01, Amex members and member organizations are required to provide to all purchasers of Trust shares a written description of the terms and characteristics of the securities, in a form prepared by the Exchange, not later than the time a confirmation of the first transaction in each series is delivered to the purchaser. The Exchange also requires that the description be included with any sales material on the Trust that is provided to customers or the public. In addition, the Exchange requires that members and member organizations provide customers the prospectus for the Trust upon request.

A member or member organization carrying an omnibus account for a non-member broker-dealer is required to inform the non-member that execution of an order to purchase Trust shares for the omnibus account will be deemed to constitute agreement by the non-member to make the written description available to its customers on the same terms as are directly applicable to members and member organizations.

Prior to commencement of trading of Trust shares, the Exchange will distribute to Exchange members and member organizations an Information Circular calling attention to characteristics of the Trust and to applicable Exchange rules.

[28] With respect to the Trust, the Sponsor has the discretionary right to direct the Trustee to terminate the Trust if at any time after six months following and prior to three years following the inception of the Trust the net asset value falls below $150,000,000, or if at any time on or after three years following inception of the Trust the net asset value of the Trust is below $350,000,000 in value, adjusted annually for inflation.

[29] *See* Amendment No. 3, *Supra* note 5.

[30] *See* Amex Rule 918C.

[31] *See* Amendment No. 3, *supra* note 5.

Stop and Stop Limit Orders

Amex Rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security [32] (other than an option, which is covered by Rule 950(f) and Commentary thereto) the price of which is derivatively priced based upon another security or index of securities,[33] may with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary .04(c)(i–v). The Exchange has designated PDRs (Trust shares are PDRs) as eligible for this treatment.[34]

Other Applicable Rules

Like SPDRs, MidCap SPDRs, and DIAMONDS, trading in Trust shares on the Amex will be subject to the provisions of Amex Rules 1000 *et seq.* and regular Exchange equity trading rules will apply, including Exchange rules relating to priority, parity and precedence and the obligations of specialists. The provisions of Amex Rule 411 (Duty to Know and Approve Customers) apply to customer transactions in PDRs, and would therefore apply to Trust units transactions; no enhanced suitability standards are applicable to such securities.

Adoption of Rule 1006

The Exchange proposes to adopt Amex Rule 1006 [35] to provide for disclaimers of liability by Nasdaq and the Exchange in connection with the Nasdaq-100 Index and trading of Trust Shares. The Exchange states that this provision is similar to other Exchange rules relating to disclaimers with respect to PDRs (*i.e.*, Amex Rule 1004 for S&P 500 Index and Amex Rule 1005 for Dow Jones Indexes) as well as index options (*i.e.*, Amex Rule 902C). The Exchange further states that the last two sentences of proposed Amex Rule 1006, which are similar to language included in Amex Rule 902C for index options, clarify that the rule provides a disclaimer of liability to Nasdaq and the Exchange with respect to the Nasdaq-100 Index.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5).[36] The Commission believes that the Exchange's proposal to list and trade Trust shares will offer investors an efficient way of participating in the securities markets. The Exchange's proposal should help to provide investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell a low cost security replicating the performance of a portfolio of stocks at negotiated prices throughout the business day.[37] Specifically, the Commission believes that the trading of Trust shares will provide investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell a low-cost security replicating the performance of a broad portfolio of stocks at negotiated prices throughout the business day.[38] The Commission also believes that PDRs in general, and Trust shares in particular, will benefit investors by allowing them to trade securities based on a portfolio of stocks in secondary market transactions.[39] Accordingly, as discussed below, the proposed rule change is consistent with the requirements of Section 6(b)(5) that Exchange rules facilitate transactions in securities while continuing to further investor protection and the public interest.[40]

As the Commission noted in previous orders approving other PDR products (SPDRs, MidCap SPDRs, and DIAMONDS) for listing and trading on Amex,[41] the Commission believes that the trading of securities like PDRs in general, and Trust shares in particular, which replicate the performance of a broad portfolio of stocks, could benefit the securities markets by, among other things, helping to ameliorate the volatility occasionally experienced in these markets. The Commission believes that the creation of one or more products where actual portfolios of stocks or instruments representing a portfolio of stocks, such as Trust shares, which trade at a single location in an auction market environment could alter the dynamics of program trading, because the availability of such single transaction portfolio trading could, in effect, restore the execution of program trades to more traditional block trading techniques.[42]

An individual Trust share has a value approximately equal to one-twentieth of the prevailing value of the Nasdaq-100 Index,[43] making it available and useful to individual retail investors desiring to hold a security replicating the performance of a broad portfolio of stocks. Accordingly, the Commission believes that trading of Trust shares will provide retail investors with a cost efficient means to make investment decisions based on the direction of the market as a whole and may provide market participants several advantages over existing methods of effecting program trades involving stocks.

The Commission also believes that PDRs, in general, and Trust shares, in particular, will provide investors with several advantages over standard open-end mutual fund shares that track a broad-based portfolio of stocks such as the Nasdaq-100 Index. In particular,

[32] Stop sell orders generally are entered in a stock whose price has increased substantially to protect the investor's profits should the stock price decline. Similarly, stop buy orders generally are entered by investors with short positions to limit losses should the stock price increase. Conversely, stop limit orders give investors the advantage of specifying the limit price: the maximum price an investor will pay in the case of a stop limit order to buy, or the minimum price an investor will accept in the case of a stop limit order to sell.

[33] A stop or stop limit order in a derivative security is elected, *i.e.*, becomes a market or limit order, respectively, when the quoted market for the derivative security reaches the appropriate stop or stop limit price. Once elected, the specialist treats the orders like any other market or limit order, respectively. The specialist must execute the market order at the next best market price, and must execute the limit order at the limit price or hold the order on his limit order book until the limit price is available.

[34] *See* Securities Exchange Act Release No. 39607 (February 2, 1998), 63 FR 6587 (February 9, 1998) (File No. SR–Amex–98–04), regarding the designation of PDRs as eligible for stop and stop limit order election under Amex Rule 154(c). *See also* Securities Exchange Act Release No. 29063 (April 10, 1991), 56 FR 15652 (April 17, 1991) (File No. SR–Amex–90–31) regarding election of stop and stop limit orders by quotation for certain derivative equity securities designated by the Exchange as eligible for election.

[35] *See* Amendment No. 4, *supra* note 6.

[36] 15 U.S.C. 78f(b)(5).

[37] The Commission notes, however, the unlike typical open-end investment companies, where investors have the right to redeem their fund shares on a daily basis, investors in Trust shares can redeem them in Creation Unit size aggregations only. Nevertheless, Trust shares would have the added benefit of liquidity from the secondary market and Trust share holders, unlike holders of most other open-end funds, would be able to dispose of their shares in a secondary market transaction.

[38] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[39] *See supra* note 37.

[40] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[41] *See supra* notes 8, 11, and 12.

[42] Program trading is defined as Index arbitrage or any trading strategy involving the related purchase or sale of a ''basket'' or group of fifteen or more stocks having a total market value of $1 million or more.

[43] As of November 12, 1998, it is estimated that the value of an individual Trust share would be approximately $74.

investors will have the ability to trade Trust shares continuously throughout the business day in secondary market transactions at negotiated prices.[44] In contrast, pursuant to Investment company Act Rule 22c–1,[45] holders and prospective holders of open-end mutual fund shares are limited to purchasing or redeeming securities of the fund based on the net asset value of the securities held by the fund as designated by the board of directors.[46] Accordingly, PDRs in general, and Trust shares in particular, will allow investors to (1) respond quickly to changes in the market; (2) trade at a known price; (3) engage in hedging strategies not currently available to retail investors; (2) trade at a known price; (3) engage in hedging strategies not currently available to retail investors; and (4) reduce transaction costs for trading a portfolio of securities.

Although PDRs in general, and Trust shares in particular, are not leveraged instruments, and therefore, do not possess any of the attributes of stock index options, their prices will still be derived and based upon the securities held in their respective Trusts. In essence, Trust shares are equity securities that are priced off a portfolios of stocks based on the Nasdaq-100 Index. Accordingly, the level of risk involved in the purchase or sale of Trust shares (or a PDR in general) is similar to the risk involved in the purchase or sale of traditional common stocks, with the exception that the pricing mechanism for Trust shares (and PDRs in general) is based on a basket of stocks. Based on these factors, the Commission believes that it is appropriate to regulate Trust shares in a manner similar to other equity securities. Nevertheless, the Commission believes that the nature of Trust shares raise certain product design, disclosure, trading, market impact, and other issues that must be addressed adequately. As discussed in more detail below, the Commission believes Amex adequately addresses these concerns.

(a) The Nasdaq-100 Trust Generally

The Commission believes that the proposed Trust shares are reasonably designed to provide investors with an investment vehicle that substantially reflects in value the index it is based upon, and in turn, the performance of 100 of the largest and most actively traded non-financial companies' equity securities listed on the Nasdaq National Market tier of the Nasdaq Stock Market. The Nasdaq Stock Market is primarily responsible for the assignment of stocks into the Nasdaq-100 Index. The Nasdaq Stock Market also imposes specific criteria in its selection of the Nasdaq-100 Index components. In selecting components for the Nasdaq-100 Index, the Nasdaq Stock Market evaluates, among other things, the market capitalization and trading volume of the components to assure that the stocks within the Index are liquid and highly capitalized.

The aim of the component selection process is to make the Nasdaq-100 Index components highly representative of the over-all economic sector make-up and market capitalization of a given market. At the same time, securities that are illiquid or that have a small capitalization are avoided. The Commission believes that these criteria should serve to ensure that the underlying securities of this Index are well capitalized and actively traded.

(b) Disclosure

The Commission believes that the Exchange's proposal should ensure that investors are adequately apprised of the terms, characteristic, and risks of Trading Trust shares. As noted above, the proposal contains four aspects addressing disclosure concerns. First, pursuant to Amex Rule 1000(a), Commentary .01, Amex members must provide their customers trading Trust shares with a written explanation of any special characteristics and risks attendant to trading PDR securities (such as Trust shares), in a form prepared by Amex. As discussed above, members can obtain Trust shares product descriptions for distribution to customers from Amex. Second, members and member organizations must include this written product description with any sales material relating to the series of Trust shares that is provided to customers or the public. Third, any other written materials provided by a member or member to customers or the public referencing Trust shares as an investment vehicle must include a statement, in a form specified by Amex, that a circular and prospectus are available from a broker upon request. Fourth, a member or member organization carrying account for a non-member broker-dealer is required to inform the non-member that execution of an order to purchase a series of Trust shares for the omnibus account will be deemed to constitute agreement by the non-member to make the written product description available to its customers on the same terms as member firms are required to comply with. Accordingly, the Commission believes that investors in PDR securities, in general, and Trust shares, in particular, will be provided with adequate disclosure of the unique characteristics of the PDR instruments and other relevant information pertaining to the instruments.

Finally, under Amex's proposal there will be no special account opening of customer suitability rules applicable to the trading of Trust shares.[47] However, pursuant to Amex Rule 1000(a), Amex equity rules governing account opening and suitability will apply. Specifically, these rules provide that members shall use due diligence to learn the essential facts relative to every customer, order or account opened, and, prior to or promptly after the completion of a transaction for the account, specifically approve the opening of the account.[48]

(c) Trading of Trust Shares

The Commission finds that Amex's proposal contains adequate rules and procedures to govern the trading of Trust shares. Specifically, Trust shares, like other listed PDRs, will be deemed equity securities subject to all Amex rules governing the trading of equity securities, including, among others, rules governing the priority, parity and precedence of orders, market volatility related to trading halt provisions pursuant to Rule 117, and responsibilities of specialists. The Commission also notes that the Amex may consider halting trading in any series of Trust shares under certain other circumstances, including those set

[44] Because of potential arbitrage opportunities, the Commission believes that Nasdaq-100 Trust shares will not trade at a material discount or premium in relation to their net asset value. The mere potential for arbitrage should keep the market price of a Nasdaq-100 Trust share comparable to its net asset value, and therefore, arbitrage activity likely will be minimal. In addition, the Commission believes the Trust will track the underlying Index more closely than an open-end Index fund because the Trust will generally accept only in-kind deposits, and, therefore, will not incur brokerage expenses in assembling its portfolio. In addition, the Trust will generally redeem only in kind, thereby enabling the Trust to invest virtually all of its assets in securities comprising the underlying Index.

[45] Investment Company Act Rule 22c–1 generally requires that a registered investment company issuing a redeemable security, its principal underwriter, and dealers in that security, may sell, redeem, or repurchase the security only at a price based on the net asset value next computed after receipt of an investor's request to purchase, redeem, or resell. The net asset value of a mutual fund generally is computed once daily Monday through Friday as designated by the investment company's board of directors. The Commission granted the Nasdaq-100 Trust an exemption from this provision in order to allow Trust shares to trade a negotiated prices in the secondary market. *See supra* note 15.

[46] *Id.*

[47] This reflects the fact that PDRs are equity products and not options products, and, therefore, do not necessitate the imposition of options-like rules.

[48] *See* Amex Rule 411.

forth in Amex Rule 918C(b)(4) regarding the presence of other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market.

The Commission is satisfied with the specific listing and delisting criteria for PDRs that are applicable to Trust shares.[49] These criteria should help to ensure that a minimum level of liquidity will exist for Trust shares and allow for the maintenance of fair and orderly markets. The delisting criteria also allows the Exchange to consider the suspension of trading and the delisting of a Trust share, if an event were to occur that made further dealings in the securities inadvisable.[50] Thus, the Exchange has flexibility to delist any of the Trust shares upon which a series of PDRs is based if circumstances warrant such action.[51] Accordingly, the Commission believes that the rules governing the trading of PDRs, including Trust shares, provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.

(d) Market Impact

The Commission believes Amex has adequately addressed the potential market impact concerns raised by the proposal. First, Amex's proposal permits listing and trading of Trust shares only after review by the Commission. Second, Amex has developed policies regarding trading halts in Trust shares. Specifically, the Exchange would halt trading of Trust shares if the circuit breaker parameters under Amex Rule 117 were reached.[52] In addition, in deciding whether to halt trading or conduct a delayed opening in PDRs, in general, and Trust shares, in particular, Amex represents that it will be guided by, but not necessarily bound to, relevant stock index option trading rules. These rules would permit Amex, when determining whether to halt trading of Trust shares, to consider, among other things, the extent to which trading is not occurring in stocks underlying the Index or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[53]

The Commission believes that the trading of PDRs in general, and Trust shares in particular, on Amex should not adversely affect U.S. securities markets. As to the trading of Trust shares, the Commission notes that the corpus of the Trust shares is a portfolio of stocks replicating the Nasdaq-100 Index, a broad hybrid based equal/capitalization weighted index, consisting of 100 of the largest and most actively traded non-financial companies' equity securities listed on the Nasdaq national market tier of the Nasdaq Stock Market. In fact, as described above, the Commission believes that the trading of Trust shares may provide substantial benefits to the marketplace and investors, including, among others, enhancing the stability of the markets of individual stocks.[54] Accordingly, the Commission believes that trading of Trust shares does not contain features that will make them likely to adversely affect the U.S. securities markets.

(e) Dissemination of Information by the Exchange

The Commission believes that the real-time Value the Exchange proposes to disseminate will provide investors with timely and useful information concerning the value of the Nasdaq-100 Trust shares on a per share basis. The Exchange represents that the information will reflect currently-available information concerning the value of the assets comprising the securities portion of a Portfolio Deposit. This information will be disseminated every 15 seconds during each business day. In addition, since it is expected that the Value will closely track the value of the Nasdaq-100 Trust shares on a per share basis, the Commission believes that the Value will provide investors with adequate information to determine the intra-day value of the given Nasdaq-100 Trust share. The Commission expects that the Amex will monitor the disseminated Value, and if the Amex were to determine that the Value does not closely track the value of the Nasdaq-100 trust share, it would arrange to disseminate an adequate alternative value.

(f) Surveillance

The Commission also notes that Amex has submitted surveillance procedures for the trading of Trust shares. These procedures incorporate the Trust shares into the existing Amex surveillance procedures to address concerns associated with the listing and trading of such securities.

The Commission also notes that certain concerns are raised when an entity, such as the Nasdaq Stock Market, is involved in the development and maintenance of a stock index, upon which a product such as the Trust shares is based. The Commission notes that the Nasdaq Stock Market has implemented procedures to prevent the misuse of material, non-public information regarding changes to component stocks in the Nasdaq-100 Index to assuage such concerns. The Commission believes that the ''Fire Wall'' procedures put in place by the Nasdaq Stock Market to survey and segregate the index administration staff and all the other staff members should address concerns raised by the Nasdaq Stock Market's involvement in the management of the Nasdaq-100 Index.

(g) Stop and Stop Limit Orders

As noted above, Amex Rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by Amex Rule 950(f) and Commentary thereto) the price of which is derivatively priced based upon another security or index of securities, may with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary .04(c)(i–v). The Exchange has designated PDRs (Trust shares are PDRs), as eligible for this treatment. The Commission believes that to allow stop and stop limit orders in PDRs to be elected by quotation, a rule typically used in the options context, is appropriate because, as a result of their derivative nature, Trust

[49] *See* Amex Rule 1002(b).

[50] *See* Amex Rule 1002(b)(iii).

[51] The Commission believes that any restrictions that change the Trust shares' fundamental characteristics should raise concerns under the delisting criteria. In such a case, the Amex should determine whether continued listing as a Trust share is appropriate.

[52] In addition, for PDRs tied to an Index, the triggering of futures price limits for index futures contracts such as Nasdaq-100 Index futures, will not, in itself, require a halt in trading of Trust shares or a delayed opening. However, the Exchange could consider such an event, along with other factors, such as a halt in Nasdaq-100 or other broad based index options trading, in deciding whether to halt trading in Trust shares or other index-based derivative securities.

[53] *See* Amex Rule 918C(b).

[54] Even through PDR transactions may serve as substitutes for transactions in the cash market, and possibly make the order flow in individual stocks smaller than would otherwise be the case, the Commission acknowledges that during turbulent market conditions the ability of large institutions to redeem or create PDRs could conceivably have an impact on price levels in the cash market. In particular, if a PDR is redeemed, the resulting long stock position could be sold into the market, thereby depressing stock prices further. The Commission notes, however, that the redemption or creation of PDRs likely will not exacerbate a price movement because PDRs will be subject to the equity margin requirements of 50% and PDRs are non-leveraged instruments. In addition, as noted above, during turbulent market conditions, the Commission believes PDRs, including SPDRs, MidCap SPDRs, DIAMONDS and Trust shares, in particular, will serve as a vehicle to accommodate and ''bundle'' order flow that otherwise would flow to the cash market, thereby allowing the order flow to be handled more efficiently and effectively. Accordingly, although Trust shares, like any other PDR, could, in certain circumstances, have an impact on the cash market, on balance we believe the product will be beneficial to the marketplace and can actually aid in maintaining orderly markets.

shares are in effect equity securities that have a pricing and trading relationship to the underlying securities similar to the relationship between options and their underlying securities.

(h) Accelerated Approval of Amendment Nos. 3 and 4

The Commission finds good cause to approve Amendment Nos. 3 and 4 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 3 strengthens the proposed rule change and may prevent manipulative acts and practices by providing for a method of disseminating the Value of the Nasdaq-100 Trust Shares on a real-time basis.[55] Given the real-time dissemination of the Value of the Nasdaq-100 Trust Shares, the Commission believes that investors will be able to more closely tracks the actual value of the Nasdaq-100 Trust on a per share basis.

In Amendment No. 4, the Exchange proposes Rule 1006, a disclaimer of liability provision substantially similar to other disclaimers adopted by the Exchange for PDRs and index options products.[56] The Commission notes that proposed Amex Rule 1006 concerns issues that previously have been the subject of a full comment period pursuant to Section 19(b) of the Act.[57] The Commission does not believe that proposed Amex Rule 1006 raises any new regulatory issues. Accordingly, the Commission believes that there is good cause, consistent with Section 6(b)(5) and 19(b) of the Act,[58] to approve Amendment Nos. 3 and 4 to the proposal on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 3 and 4, 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 the filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–98–34 and should be submitted by March 24, 1999.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[59] that the proposed rule change (SR–Amex–98–34), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[60]

Margaret H. McFarland,

Deputy Secretary.

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[55] *See* description section.

[56] *See* Amex Rules 1004, 1005, and 902C. To the extent that proposed Amex Rule 1006 differs from Amex Rules 1004 and 1005, the Commission encourages the Exchange to amend Amex Rules 1004 and 1005 to make them consistent with Amex Rule 1006.

[57] 15 U.S.C. 78s(b).

[58] 15 U.S.C. 78f(b) and 78s(b).

[59] 15 U.S.C. 78s(b)(2).

[60] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41107; File No. SR–Amex–99–06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC to Include the TheStreet.com, Inc. in the Disclaimer Provisions of Amex Rule 902C

February 25, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 4, 1999, the American Stock Exchange LLC (''Amex'' 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 Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to amend Amex Rule 902C to include the TheStreet.com, Inc. in the disclaimer provisions of that Rule. The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex 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 Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 19, 1998, the Amex submitted a proposal to trade options on the Internet Commerce Index (the ''Index''). The proposal became effective upon filing pursuant to Section 19(b)(3)(A) of the Act[2] and Rule 19b–4(c)(3) thereunder[3] because the Index met the listing criteria applicable to narrow-based indexes set forth in Exchange Rule 901C, Commentary .02.[4] Thereafter, on February 4, 1999, the Exchange submitted a proposal pursuant to Section 19(b)(3)(A) of the Act[5] and Rule 19b–4(e)(1) thereunder[6] changing the name of the Internet Commerce Index to TheStreet.com E-commerce Index.

The Amex now proposes to amend Amex Rule 902C to include TheStreet.com, Inc. in the disclaimer provisions of that Rule. Similar to other financial news vendors, TheStreet.com, Inc. is in the business of preparing and publishing editorial, evaluation and analysis reports, and news services related to the business of financial news and information which are available in the commercial marketplace through various facilities, such as TheStreet.com Web site on the portion of the Internet referred to as the World Wide Web located at the uniform resource locator (''URL'') address designated at http://www.thestreet.com.

TheStreet.com, Inc. will have no control over the Index value's dissemination. Accordingly, the Exchange believes that it is appropriate

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A).

[3] 17 CFR 240.19b–4(c)(3).

[4] Securities Exchange Act Release No. 40955 (January 19, 1999), 64 FR 3727 (January 25, 1999).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(e)(1).

to include TheStreet.com, Inc. in the disclaimer provisions in Amex Rule 902C, similar to other entities included in the provisions of Amex Rule 902C whose names are identified with various indices underlying options traded on the Amex. Notwithstanding the change in the name of the Index, the Index will continue to be maintained in accordance with all of the terms set forth in the original proposal. The Amex will continue to have sole discretion with respect to all final determinations concerning adjustments to the Index and its components including the replacement of any component, although the Amex may, from time to time, consult with TheStreet.com, Inc. in connection with the Exchange's maintenance of the Index.

2. Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act [7] in general and furthers the objectives of Section 6(b)(5) [8] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments 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

The Amex filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3(A)(iii) of the Act [9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10] 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; (3) does not become operative for 30 days from February 4, 1999, the date on which it was filed, and because the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder. 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 the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. Amex–99–06 and should be submitted by March 24, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

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[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41124; File No. SR–Amex–99–04]

Self-Regulatory Organizations; Notice of Filing an Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Revising the Weighting Methodology of The Inter@ctive Week Internet Index

March 1, 1999.

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 February 8, 1999, the American Stock Exchange LLC (''Exchange'' or ''Amex'') 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 Exchange seeks to revise the weighting methodology of the Inter@ctive Week Internet Index (''Index''), a stock index jointly developed by the Exchange and Inter@ctive Week, a biweekly magazine published by Inter@ctive Enterprises LLC. The Index measures the performance of stocks (or ADRs thereon) of companies with business directly related to the internet. The Exchange's proposal would revise the Index by changing it from a market capitalization weighted index to a modified market capitalization weighted index.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

In 1995, the Exchange received Commission approval to list and trade options on the Index.[3] The Index currently consists of the stocks of fifty companies[4] involved in the following industries: internet service providers, on-line service companies, internet tool developers, multimedia publishers, networking companies, videoconferencing companies, interactive television companies, software technology developers, and computer manufacturers. Each of the component securities trades on the Exchange, the New York Stock Exchange, or through the facilities of the Nasdaq Stock Market as national market securities. The Exchange believes that options on the revised Index will provide investors with a low-cost means to participate in the performance of the internet industry and an opportunity to hedge against the risk of investing in the industry.

Since the trading of options on the Index began in 1995, several component stocks have become more heavily weighted due to increases in their stock prices. Therefore, the Exchange seeks to revise the weighting methodology of the Index from market capitalization weighted to modified market capitalization weighted. The Exchange believes the change in weighting methodology will make options on the Index more attractive to investors because the revised Index will be less concentrated in relatively few component stocks.

In addition, the Exchange has represented that with the exception of the modified market capitalization weighting methodology, the proposal meets all the criteria set forth in Exchange Rule 901C, Commentary .02 and the Commission's order approving that rule.[5]

a. Index calculation. 1. Current methodology. The Index currently is calculated using a market capitalization weighted methodology; specifically, the Index value is calculated by multiplying the primary exchange regular way last sale price of each component stock by its number of shares outstanding, adding the sums, and dividing by the current index divisor.

2. Proposed methodology. The Exchange proposes to use a modified market capitalization weighted methodology for the Index. Similar to the methodology currently used, the Index value will be calculated by multiplying the primary exchange regular way last sale price of each component stock by its *adjusted* number of shares outstanding, adding the sums, and dividing by the current index divisor. The weighting of the component stocks will be based on their market capitalizations and adjusted number of shares outstanding, subject to the following diversification requirements: (1) the weight of any single component stock may not account for 25% or more of the total value of the Index; (2) the five highest component stocks in the Index may not in aggregate account for more than 50% of the weight of the Index; and (3) the aggregate weight of those component stocks which individually represent less than 5% of the total value of the Index must account for at least 50% of the total Index value.

To ensure these diversification requirements are observed when the Exchange rebalances the Index each quarter (on or around the third Friday in March, June, September, and December), the Exchange will take into account component changes and scheduled share adjustments and also will adjust the weights of the component stocks according to the three ''Rules'' discussed below. The application of the Rules yields an adjusted share weight for the component stocks; this adjusted share weight is used to calculate the Index.

A. Rule 1: Reweighting of Index due to single component stock exceeding 20% of the total Index value. If the weighting of any component stock exceeds 20% of the total weighted value of the Index, then all stocks having weightings greater than 15% of the Index will be reduced in weight so that each represents 15% of the total weighted value of the Index. The aggregate amount by which each component stock is reduced (*i.e.*, the amount exceeding 15%) will be redistributed proportionately across the remaining component stocks that have weightings less than 15% of the total weighted value of the Index. If this redistribution causes any other component stock to have a weighting that exceeds 15%, the weighting of that component stock also will be reduced to 15% of the total Index value and the excess will be redistributed proportionately across other component stocks that have weightings less than 15% of the total weighted value of the Index.

Exhibit B to the Exchange's proposal demonstrates that the application of Rule 1 to the Index as of January 15, 1999, would cause the weighting of Cisco Systems to drop from 31.84% to 15%. The redistribution of the ''excess'' weight of Cisco Systems (approximately 16.84%) across the remaining 49 Index components with weights less than 15% would cause America Online to also exceed 15%. As a result, America Online would likewise be capped at 15% and its excess weight would be distributed across the remaining 48 Index components.

B. Rule 2: Reweighting of Index due to five largest component stocks exceeding 50% of the total Index value. If the aggregate weight of the five largest component stocks (following any necessary adjustments made according to Rule 1) is greater than 50% of the total weighted value of the Index, then the weight of each of the five largest stocks will be reduced proportionately so that the aggregate weight of those five component stocks will amount to 45% of the total weighted value of the Index. The amount by which the aggregate weight of the five largest stocks exceeds 45% will be redistributed proportionately to those stocks which are not among the five largest component stocks. If because of this redistribution the weight of any component stock exceeds the lesser of (i) 4.0%, and (ii) the scaled down weight of the fifth largest stock, then the weight of that component stock will be reduced to equal the lesser of 4.0% and the scaled down weight of the fifth largest stock. The excess weight will be allocated to the remaining component stocks until amount has been redistributed.

Exhibit B to the Exchange's proposal demonstrates that the application of

[3] *See* Securities Exchange Act Release No. 36163 (August 29, 1995), 60 FR 45750 (September 1, 1995).

[4] Exhibit B to the Exchange's proposed rule change identifies the fifty companies making up the Index and lists them according to Index weighings, the companies are: Cisco Systems, America Online, Sun Microsystems, Yahoo!, Amazon.com, Qwest Communications International, Ascend Communications, 3Com, Level 3 Communications, At Home, eBay, Network Associates, Novell, Newbridge Networks, Netscape Communications, Intuit, E Trade Group, QUALCOMM, CMGI, Sterling Commerce, Inktomi Corporation, Excite, Adobe Systems, Network Solutions, Silicon Graphics, MindSpring Enterprises, broadcast.com, Infoseek, Earthlink Network, USWeb, GeoCities, Check Point Software Technologies, Cabletron Systems, Verisign, RealNetworks, PSINet, Macromedia, CheckFree Holdings, DoubleClick, CNET, Security Dynamics, ONSALE, BroadVision, Pairgain Technologies, SportsLine USA, Open Market, Harbinger, CyberCash, Spyglass, and VocalTec Communications.

[5] Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062 (June 10, 1994).

Rule 2 to the Index as of January 15, 1999, would cause the weightings of Cisco Systems and America Online to each drop from 15% to 12.67%, the weighting of Sun Microsystems would drop from 9.69% to 8.19%, the weighting of Yahoo! would drop from 7.93% to 6.70%, and the weighting of Amazon.com would drop from 5.63% to 4.76%. The second element of Rule 2 would cause the weightings of Qwest Communications International, Ascend Communications, 3Com, and Level 3 Communications to each change to 4.00%.

C. Rule 3: Reweighting of Index if more than 45% of the total Index value is comprised of stocks with weightings greater than 4.5%. If the aggregate weight of stocks having weightings of more than 4.5% of the total weighted value of the Index (*i.e.*, the ''Large Stocks'') is greater than 45% of the total Index value, then the weight of those component stocks will be scaled down proportionately to represent in aggregate 40% of the total weighted value of the Index. The amount by which these Large Stocks in aggregate exceed 40% will be redistributed proportionately to those stocks having weightings less than 4.5% of the total Index value. If because of this redistribution the weight of any component stock exceeds the lesser of (i) the weight of the smallest Large Stock, and (ii) 4.5%, then the weight of that component stock will be set to equal the lesser of the weight of the smallest Large Stock and 4.5%. The excess weight will be allocated to the remaining component stocks until the entire amount has been redistributed.

Because the component stocks having weightings of more than 4.5% do not in the aggregate represent more than 45% of the total weighted value of the Index, Rule 3 is not applicable. Therefore, as of January 15, 1999, the weightings of all component stocks would remain unchanged from the weightings derived from Rule 2.

3. Compliance with maintenance criteria. Exchange Rule 901C, Commentary .01, which requires that at least 90% of the subject index's numerical value be accounted for by stocks that meet the criteria and guidelines set forth in Exchange Rule 915, will continue to apply to the revised Index. The Exchange shall not open for trading any additional option series if the Index fails to satisfy any of the maintenance criteria set forth above unless such failure is determined by the Exchange not to be significant and the Commission concurs in writing with the Exchange's determination, or unless the continued listing of the Index option has been approved by the Commission pursuant to Section 19(b)(2) of the Act.[6]

4. Index split. The initial value of the revised Index will be set at approximately ⅓ the value of the market capitalization version of the Index at that time (*i.e.*, the Exchange will split the Index 3:1 when options on the revised Index are introduced). Similar to other stock index values published by the Exchange, the value of the revised Index will be calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B.

5. Calculation and maintenance of Index. Like the current version, the revised Index will be calculated and maintained by the Exchange. A committee consisting of two representatives from the Exchange, two representatives from Inter@ctive Week, and one representative from the internet industry will be available to advise the Exchange when, pursuant to Exchange Rule 901C(b), the Exchange substitutes stocks, or adjusts the number of stocks included in the Index, based on changing conditions in the internet industry or in the event of certain types of corporate actions such as a merger or takeover which warrant the removal of a component stock from the Index. The Exchange anticipates that the committee will meet on a quarterly basis to review possible candidates for removal from or inclusion in the Index, which will be publicly announced as far in advance of the occurrence as practicable. In selecting stocks to be included in the Index, the Exchange, in conjunction with the committee, will be guided by a number of factors including market value of outstanding shares, trading activity, and the criteria in Exchange Rule 901C, Commentary .02.

b. Phase-out of option contracts based on existing capitalization weighted index. Upon issuance of a release regarding this proposed rule change, the Exchange will provide for the phase-out of all outstanding option contracts based on the existing market capitalization weighted version of the Index. In particular, the Exchange will assign a new symbol to all outstanding Index option series and will prohibit the opening of any additional new series that are based on the market capitalization weighted version of the Index. Further, the Exchange will assign the existing symbol (IIX) to the modified market capitalization weighted version of the Index; this will allow the introduction of series based on the revised version of the Index. Lastly, the Exchange will issue an Information Circular describing the change in weighting methodology and other relevant information concerning the revised Index.

c. Compliance with Commission's previous approval order. With the exception of the revisions set forth above, the Exchange does not seek to alter or amend any term or condition of the previous Commission order that approved the listing and trading of options on the Index. Specifically, the Exchange represents that the revised Index and all Exchange-listed option contracts on the revised Index shall continue to comply with the requirements and conditions in the Commission's previous approval order, including for example, the requirements set forth under the headings: (i) Eligibility Standards for Index Components, (ii) Maintenance of the Index, (iii) Expiration and Settlement, and (iv) Exchange Rules Applicable to Stock Index Options.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5),[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe 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

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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; (3) does not become operative for 30 days from February 8, 1999, the date on

[6] 15 U.S.C. 78s(b)(2).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

which it was filed; and because the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] 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 persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchanger. All submissions should refer to File No. SR–Amex–99–4 and should be submitted by March 24, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

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[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41121; File No. SR–CBOE–98–35]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to Proposed Rule Change Relating to Order Book Rates and Floor Brokerage Subsidies

February 26, 1999.

I. Introduction

On July 27, 1998, the Chicago Board Options Exchange, Inc. (''CBOE'' 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[2] thereunder, a proposal to allow CBOE market-makers in a trading crowd to subsidize the limit order book rate and the activity of stationary floor brokers who represent orders in that crowd. The proposed rule change was published for comment in the **Federal Register** on September 16, 1998.[3] The Commission received one comment letter on the proposal.[4]

On February 26, 1999, CBOE filed Amendment No. 1 to the proposed rule change.[5] This notice and order approves the proposed rule change, as amended, and seeks comments from interested persons on Amendment No. 1 to the proposal.

II. Description of the Proposal

A. Background

Many options traded on CBOE are traded in crowds where the quotes are established by competing market-makers.[6] In CBOE's competing market-maker crowds, the agency function is performed by OBOs, who are CBOE employees, and floor brokers, including stationary floor brokers (''SFBs'') who remain at stations where the option classes are traded. An OBO maintains the limit order book in each options class, and generally only limit orders away from the current market price may be placed with an OBO. Orders in which any CBOE member or another broker-dealer has an interest may not be placed with an OBO. Orders that cannot be placed with an OBO can be routed through CBOE's order routing system to the floor terminal of an SFB. Other exchanges, such as the American Stock Exchange, have a specialist system that is akin to CBOE's DPM system. Unlike CBOE's market-maker crowds, DPMs and specialists can serve both the agency and principal functions.

As a result of the differences between competing market-maker crowds and specialist systems, the OBO's rates at CBOE compete with rates charged by specialists with respect to orders that can be placed with an OBO, and the SFB's rates at CBOE compete with the rates of specialists with respect to most other agency orders. CBOE contends that specialists can reduce their brokerage rates to attract order flow and can offset such reductions through revenue they earn from the principal part of their business. Because CBOE's market-makers (which cannot represent agency orders) and SFBs (which do not have a proprietary business) lack the flexibility over pricing enjoyed by specialists, CBOE developed the current proposal to allow CBOE and its member firms to better compete with other exchanges in floor brokerage and order book rates.

B. General Description of the Proposal

The Exchange is proposing a new Rule 2.40 that would allow the Exchange to impose a fee on market-makers (''Surcharge'') for contracts traded by market-makers in a particular option class. This fee, not to exceed $0.25 per contract,[7] will be collected by

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 40419 (September 9, 1998), 63 FR 49619.

[4] Comment Letter, from the United States Department of Justice, dated October 21, 1998 (''DOJ Letter''). CBOE submitted a letter responding to the DOJ Letter. *See* letter from William Brodsky, Chairman, CBOE, to Richard Lindsey, Director, Division of Market Regulation (''Division''), SEC, dated December 17, 1998 (''CBOE Response Letter'').

[5] *See* letter from Timothy Thompson, Director—Regulatory Affairs, to Michael Walinskas, Deputy Associate Director, Division, SEC, dated February 26, 1999 (''Amendment No. 1''). Among other things, in Amendment No. 1 CBOE proposes to cap the Market-Maker Surcharge at $0.25 per contract, to grant the authority to impose the Surcharge to the appropriate Floor Procedure Committee rather than to the Resident Market-Makers as was originally-proposed, and to operate the proposal as a pilot program through March 31, 2000.

[6] Other options on CBOE are traded in a Designated Primary Market-Maker (''DPM'') system. The DPM functions in approved classes of options as a market-maker, floor broker, and in the place of the Order Book Official (''OBO''). *See* CBOE Rules Chapter VIII, Section C: Modified Trading System. This proposal does not apply to DPM option classes. *See* Amendment No. 1, *supra* note 5.

[7] *See* Amendment No. 1, *supra* note 5. Bids and offers in options series trading below $3 are expressed in sixteenths of a dollar, *i.e.* $0.0625. Because standard options contracts have a multiplier of 100 (*i.e.*, they represent interest in 100 shares of the underlying security), the value of the minimum spread between any option contract

Continued

the Exchange and will be used for two purposes. First, it will be used to reimburse the Exchange to the extent the OBO brokerage rate is reduced if such reduction is based upon a recommendation of the Resident Market-Makers.[8] Any remaining amount of the Surcharge collected will then be paid to SFBs[9] to induce them to reduce the brokerage rates they charge their customers, which are primarily other broker-dealers representing customer orders as agent.[10] Therefore, the proposed Surcharge would allow CBOE to compete with other exchanges in two respects: (1) based on the respective fee each exchange charges a firm to place an order on the limit order book, and (2) by anticipated reductions in fees SFBs charge their customers to place orders with them.

C. How the Surcharge Will be Determined

Under proposed Rule 2.40, the Appropriate Floor Procedure Committee (''Committee''),[11] under authority delegated to it by CBOE's Board of Directors, will determine the option classes for which the Surcharge would be assessed as well as what that Surcharge, if any, will be.[12] Any Resident Market-Maker can recommend a Surcharge amount. All Resident Market-Makers then vote on the recommended amounts of the Surcharge, with each person having an equal vote.[13] Any amount that receives a majority of the votes is the Surcharge amount that is recommended to the Committee, which then decides the actual Surcharge. In reaching its decision, the Committee must consider the vote of the Resident Market-Makers and the views of any market-maker in favor of or opposed to the recommended Surcharge.[14] The Committee is not bound, however, to follow the Resident Market Makers' recommendation. The Committee is free to impose a different Surcharge than the one recommended or to impose no Surcharge at all.[15] Any market-maker may appeal the decision of the Committee to the Exchange's Appeals Committee pursuant to Chapter XIX of CBOE's Rules. The Surcharge will remain in effect until the appeal has been decided.

Once the Committee determines to implement a Surcharge and change the OBO fee, it will file a rule proposal with the SEC pursuant to Section 19(b)(3)(A) under the Act.[16] After determining to impose or amend a Surcharge, the Committee will notify CBOE's Board at the meeting following the determination.[17] Any Surcharge to be paid by the market-makers would be in effect for at least one month to avoid disrupting normal Exchange billing and accounting procedures.

D. Disclosure Requirements

Proposed Rule 2.40(h) requires that SFBs disclose to their customers any Surcharge they receive. This disclosure will be akin to that required under Exchange Act Rule 10b–10 regarding payment for order flow.[18]

III. Summary of Comment and CBOE Response

A. DOJ Comment

As discussed, the Commission received one comment on the proposal, from the Department of Justice (''DOJ'').[19] DOJ urged that the proposed rule not be approved until the Exchange has adequately explained why the proposal will not adversely affect competition and until the Exchange has provided a fuller explanation of how the proposal will promote competition between it and other exchanges. Specifically, DOJ objected to allowing market-makers to agree on matters that could affect the public pays.[20] DOJ was also concerned about the possibility that the Surcharge may increase pressure on market-makers to increase their spreads to finance the Surcharge, thus increasing consumer costs. DOJ contended that the risk of an adverse effect could be greatest for small retail market orders that are executed automatically without intervention by the OBO or a floor broker because these customers may not receive any benefit from lower floor broker commissions.

DOJ also noted that there was no guarantee that the proposal will reduce consumer commission costs because SFBs are under no obligation to reduce their commission rates under the proposed rule change. Moreover, DOJ argues that even if SFB's commission rates were reduced to off-floor brokers, off-floor brokers may not reduce charges to their public customers. DOJ also noted that off-floor brokers would have an incentive to route orders to CBOE

listed on the Exchange would be $6.25 ($0.0625 times 100). Options priced over $3 have a minimum spread of one eighth of a dollar ($12.50 value for the minimum spread). Thus, the 25-cent cap on the Surcharge will ensure that it remains far below the minimum quote increment for options traded on CBOE.

[8] The proposal defines a ''Resident Market-Maker'' as someone who transacted at least 80% of his market-maker contracts in option classes traded in the trading crowd in the prior calendar month. If the Exchange decides on its own initiative to reduce the OBO rate for a particular option class, then the Surcharge would not be used to reimburse the Exchange.

[9] An SFB is defined in the proposal as a floor broker (A) who has established a business in the trading crowd for that options class of accepting and executing orders for members of registered broker-dealers, and (B) who transacted at least 80% of his orders for the previous month in the trading crowd at which that option class is traded. According to the Exchange, the definition is designed to ensure that those floor brokers who have made a commitment to the particular option class and who are willing to accept orders from a wide variety of market participants are the ones who will benefit from the subsidy.

[10] Generally, there is only one SFB in a trading crowd. Where there is more than one SFB in a trading crowd, the amount of the Surcharge remaining after the Exchange has been reimbursed will be paid to the SFBs on a *pro rata* basis based on the number of the Exchange's order routing system (''ORS'') orders executed by each floor broker. For purposes of proposed Rule 2.40, an ORS Order is an order that is sent over ORS and given an ORS identification number, and that is not an order of the firm for whom the SFB acts as a nominee or for whom the SFB has registered his membership. Non-ORS orders—such as spreads, large telephone orders, and complex or contingent orders—are excluded from the proposal because they require a higher level of service and thus are not as price sensitive as ORS orders. In addition, the Exchange determined not to allow ORS orders executed by an SFB on behalf of the firm for whom the SFB is a nominee or for whom he has registered his membership because these orders will be executed by the SFB by virtue of the relationship rather than the brokerage rate charged.

[11] CBOE has three Floor Procedure Committees, although only one, the Equity Floor Procedure Committee (''EFPC''), governs equity options that are multiply traded (*i.e.*, those to which the proposal applies). Generally, the EFPC consists of 15 to 25 members who trade on the floor. The Chairman of the EFPC is almost always a member of CBOE's Board of Directors. EFPC members that would be impacted by the Surcharge would be required to recuse themselves from that vote. *See* Amendment No. 1, *supra* note 5.

[12] The proposal is limited, however, to options classes in competing market-maker crowds that are multiply traded, and does not include DPM options classes. *See* Amendment No. 1, *supra* note 5. As of February 1, 1999, there were 1375 options classes traded on CBOE. Two hundred and seventy of these were multiply traded at market maker stations.

[13] *See* Amendment No. 1, *supra* note 5. Under the original proposal, the vote was to be weighted in accordance with each Resident Market-Maker's percentage of the contracts traded in the relevant options class during the six calendar months prior to the month in which the vote is taken.

[14] The Committee must give notice of its meeting schedule for the consideration of the Surcharge and the deadline for the submission of other materials for its consideration.

[15] The Committee may delegate responsibility for reviewing submitted materials and to review other positions to a Sub-Committee. The full Committee, however, makes the final decision regarding whether the fee should be imposed and the amount, if any, of the Surcharge or any changes in the Surcharge.

[16] *See* Amendment No. 1, *supra* note 5.

[17] *Id.*

[18] *Id.*

[19] *See* DOJ Letter, *supra* note 4.

[20] DOJ was also concerned about the fact that Resident Market-Maker's vote was to be weighted by market share, thus creating an opportunity for market-makers with substantial order flow to set the Surcharge that competing market-makers must also pay. The Commission notes that under the proposal as amended each Resident Market-Maker would have an equal vote in determining whether to impose a Surcharge and the amount of the Surcharge. *See* Amendment No. 1, *supra* note 5.

because of reduced commissions, thus creating a form of ''payment for order flow'' and harming customers because the customers could receive a better execution if orders are routed elsewhere.

B. CBOE's Response

In its Response Letter, CBOE first explained in greater detail its market-maker system, how it differs from the specialist systems employed at other options exchanges, and the reasons for the proposal.[21] CBOE argued generally that the proposal would enable the Exchange and its members to compete better with other options exchanges without creating an adverse competitive effect.

1. Widening of Spreads

COBE argued that the widening of spreads as a result of pressure on market-makers to finance the Surcharge is extremely unlikely for a number of reasons. First, since the purpose of the proposal is to attract order flow by providing brokerage rates competitive with other exchanges, it would be contrary to each market-maker's own economic interest to widen its spreads and thereby risk losing order flow. Second, CBOE argued that the Surcharge amount, expected to be $0.10 per contract or less, was not great enough to force market-makers to widen their spreads.[22] Third, CBOE noted that there is no evidence to suggest that spreads have widened when specialists at other exchanges lower their brokerage feeds.

2. Effect on Retail Orders

CBOE argued that retail orders would not be adversely affected by the proposal. According to the Exchange, these orders are automatically executed by its Retail Automatic Execution System (''RAES'') at the best bid or offer (''BBO'') then existing on CBOE. However, if that bid of offer is inferior to the current quote on another exchange, RAES automatically executes the order at the better quote on the other exchange if it is one tick better than CBOE's BBO. If the other market's quote is more than one tick better, the order will not be automatically executed by RAES. Instead, it will be ''kicked out'' of RAES and the market-maker will attempt to obtain the superior price quoted in the other market for that order. According to CBOE, under normal trading conditions ''kicked out'' orders are almost always filled at a price no worse than the CBOE bid/offer that was available at the time the order was kicked out, even if the CBOE market moves against the price in the interim.[23] According to CBOE, in most instances, the trading crowd will fill the order at a price equal to or better than the better bid or offer displayed in the other market. How this will be accomplished varies from crowd to crowd. Some crowds may attempt to ascertain whether the other quote is in fact available and will fill the order at the better price if it is available. Other trading crowds may fill the order at the better price and attempt to trade against the other market after doing so.

3. No Benefit to Public Customers

CBOE acknowledged that customers may not benefit even if the SFBs reduced their rates because they may decide to keep the savings for themselves. The Exchange noted, however, that, although the proposal would not require SFBs to pass savings on to customers, customers would be in a better position to negotiate for lower commissions if their firm's costs were reduced.

4. Payment for Order Flow

In response to DOJ's argument that the proposal could be considered a payment for order flow, CBOE contended that orders would not be sent to it when better executions are available elsewhere because of the best execution obligations of brokers and market-makers. In addition, CBOE suggested that RAES and other similar systems are designed to ensure that orders are sent to the market that can provide best execution.[24] In any event, CBOE argues that payment for order flow is not improper as long as there is adequate disclosure.[25]

IV. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations under the Act that apply to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5).[26] That section provides that the rules of a national securities exchange must be designed, among other things, to facilitate transactions in securities and to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. It also provides that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers or dealers. Moreover, the Commission believes that the proposal, as amended, is consistent with Section 3(f) under the Act.[27] That provision states that: ''Whenever pursuant to [the Act] the Commission is engaged in . . . the review of a rule of a self-regulatory organization, and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.''

A. Competitive Issues

The Commission believes that the proposed rule change, as amended, is a reasonable effort by CBOE to better enable its competitive market-maker crowds to compete for multiply listed options with other exchanges that employ a specialist system. While transaction charges are not the only means of competition among exchanges, they are an important area for distinguishing between the mix of prices and services offered by the competing options markets. As a result, the Commission believes that by potentially lowering the execution costs on CBOE, the proposal should help to promote interexchange competition. Although there is no guarantee that public customers will ultimately benefit from the reduction in brokerage rates as a result of the Surcharge, the Commission believes that CBOE intends for the proposal to have that effect. This is not to say that the proposal could not have unintended collateral effects.

One potential adverse collateral effect could be that CBOE market-makers that favored the Surcharge could use the fee as a competitive weapon to drive smaller market-makers out of a particular trading crowd. The Commission believes that the proposal has been amended in a way that should significantly reduce the likelihood that the proposal will have such an unintended effect. In this regard, the

[21] *See* CBOE Response Letter, *supra* note 4.

[22] The Commission notes that in Amendment No. 1, CBOE capped the Surcharge at $.25 per contract.

[23] *See* Amendment No. 1, *supra* note 5.

[24] For example, as discussed above, RAES will automatically execute at the other market's quote if it is one tick better than CBOE's best bid or offer. If the other market's quote is more than one tick better, then the order will be handled manually. The Commission notes that currently no options exchange system (including CBOE's RAES) re-routes orders to another market showing the best bid or offer.

[25] In Amendment No. 1, CBOE added a requirement that SFBs' customers be informed when they receive a Surcharge from CBOE market-makers.

[26] 15 U.S.C. 78f(b)(5).

[27] 15 U.S.C. 78c(f).

Commission notes that the amendments made by CBOE, such as imposing a ceiling on the Surcharge of $0.25 per contract, establishing equal weighting of Resident Market-Maker votes, and resting the ultimate authority of whether to impose a Surcharge and the amount in the Committee rather than with the Resident Market-Makers, all serve to reduce the potential for anti-competitive effects of the proposal.[28]

Another possible collateral effect of the proposal would be that CBOE market-makers might widen spreads to make up for the costs of providing floor brokers with the Surcharge First, the Commission notes generally that options market-makers are required to establish quote ranges that promote fair and orderly markets. Artificially wide quote spreads are inconsistent with that requirement.[29] In addition, competition for order flow among competing market-makers as well as between those firms and specialists on other markets serves to narrow quote spreads. The Commission does not believe that there is anything particularly unique in the current proposal that would make it more likely that a market-maker would widen spreads. The same potential concern is present under existing specialist systems. Theoretically, options specialists could, without regulatory approval, eliminate their transaction and limit order book fees, or pay for order flow, and subsidize such activities by widening their quote spreads. Under CBOE's proposal, on the other hand, the Exchange (under SEC oversight) is accountable for the Surcharge.

Additionally, the best execution obligations of the upstairs order routing firms should reduce the likelihood that spreads will be widened by requiring that those firms direct order flow to the markets that are disseminating superior quotes. The duty of best execution requires a broker-dealer to seek the most favorable terms reasonably available under the circumstances for a customer's transaction. A broker-dealer routing orders for automated execution would need to assess periodically the quality of competing markets to assure that aggregated order flow was directed to markets providing the most advantageous terms for its customers' orders.[30] Thus, any broker-dealer who sends order flow to CBOE to benefit itself from reduced brokerage commissions generally would be in violation of its duty of best execution if the orders it represents received worse executions on CBOE than available at other exchanges. Additionally, it generally would be inconsistent with a broker's best execution obligations if a broker-dealer were automatically to route orders to the exchange with the lowest brokerage/book rates when better options prices are available on another exchange. Consistent with best execution responsibilities, a broker-dealer generally should only consider routing orders to one exchange over another based on reduced brokerage/book rates under two circumstances: (1) where competing exchanges offer identical prices; or (2) where the reduced brokerage/book rates will be passed on to the broker-dealer's customers to an extent that compensates for otherwise inferior execution. The Commission anticipates that CBOE will continue vigilantly to enforce the applicable best execution duties of its member firms generally and with respect to this proposal.

Although, for the reasons discussed above, the Commission believes it is unlikely that the proposal would have the unintended result of widening spreads on CBOE, in an abundance of caution, the Commission is asking CBOE to gather and analyze data to permit comparisons of spreads on CBOE before and after a Surcharge is implemented. Should these comparisons suggest that the proposal is having such an unintended consequence, the Commission would weigh that as a factor in determining whether the proposal should be approved permanently.

B. Payment for Order Flow Issues

The Commission acknowledges that the Surcharge, which is intended to attract order flow to CBOE, could be considered a form of ''payment for order flow.'' The practice of paying for order flow has generated much debate and controversy in the past.[31] The Commission ultimately decided not to ban the practice, but instead required broker-dealers to inform customers in writing about their policies regarding the receipt of payment for order flow, including whether payment for order flow is received and a detailed description of the nature of the compensation.[32] The Exchange has amended the proposal to include a requirement that SFBs disclose to their customers the payment in a manner satisfactory to the Exchange and consistent with the broker-dealer's obligations under the federal securities laws.[33] The Commission believes that requiring SFBs to provide notice to their customers (most of which are broker-dealers) that they have received a payment to attract their orders to CBOE will provide those customers necessary information with regard to the Surcharge arrangement. In turn, those customers may use the information to negotiate better commissions from the SFB or to take other appropriate action.

C. Exchange and Continued Commission Oversight

Under the proposal, as amended, the Appropriate Procedure Committee, pursuant to authority delegated to it by the Exchange, rather than the market-maker crowd,[34] would determine whether to impose the Surcharge and, if so, its amount.[35] Although under the proposal the Committee must consider the result of the vote of the Resident Market-Makers in reaching its decision, it must also consider the views of any market-maker opposing the Surcharge or favoring a different amount.[36] Thus, under the revised proposal, the Resident Market-Makers play only an advisory role, while the Committee has the final decision-making authority.[37] Although, under the proposal, the Exchange would narrowly delegate authority to the

[28] *See* Amendment No. 1, *supra* note 5.

[29] *See, e.g.,* CBOE Rule 8.7(a), which states ''[t]ransactions of a Market-Maker should constitute a course of dealing reasonably calculated to contribute to the maintenance of a fair and orderly market, and no Market-Maker should enter into transactions or make bids or offers that are inconsistent with such a course of dealings.'' Moreover, collusive activity by market-makers to keep spreads artificially wide would, of course, violate the federal securities laws.

[30] *See* Exchange Act Release No. 36310 (September 29, 1995), 60 FR 57292 (October 10, 1995).

[31] *See* Exchange Act Release No. 33026 (October 6, 1993), 58 FR 36262 (October 13, 1993) (discussing the practice and the history of the debate).

[32] *See* Exchange Act Release No. 34902 (October 27, 1994), 59 FR 55006 (November 2, 1994) (adopting amendments to Exchange Act Rules 10b–10 and 11Ac1–3). At the same time, the Commission proposed for comment whether these disclosure requirements should apply to the options market. *See* Exchange Act Release No. 34903 (October 27, 1994), 59 FR 55014 (November 2, 1994). The Commission has yet to adopt such requirements.

[33] *See* Amendment No. 1, *supra* note 5.

[34] CBOE has also amended the vote weighting provision so that each Resident Market-Maker vote is now weighted equally. *See* Amendment No. 1, *supra* note 5.

[35] After the Surcharge and OBO rates are determined or any changes are made to them, the Committee through authority delegated by the Board will submit a rule filing to the Commission pursuant to Section 19(b)(3)(A) of the Act before the fee is implemented. *See* Amendment No. 1, *supra* note 5.

[36] Any market-maker may appeal the Committee's decision to the Exchange's Appeals Committee pursuant to Chapter XIX of CBOE Rules.

[37] Although the Board would delegate its authority to impose a Surcharge to the Committee, the Board itself could at any time impose such a fee, subject, of course to CBOE's responsibilities under the Act, on its own accord or at the suggestion of the Resident Market-Makers.

Committee to impose a Surcharge, the Committee will notify the Board of any such action at the Board meeting following the Committee's decision to impose a Surcharge.[38] this notification will ensure that the Exchange is made aware of the Committee's action and give the Exchange an opportunity to eliminate or change the fee if it decides to do so. All Surcharges would of course need to be filed with the Commission.

The Commission believes that these safeguards should help to ensure that any Surcharge is imposed fairly and in a manner designed to promote interexchange competition. Ultimately, such enhanced competition should benefit the markets and investors.

D. Accelerated Approval of Amendment No. 1

The Commission finds good cause to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the *Federal Register.* In Amendment No. 1, CBOE changed the proposal in significant ways to respond to the concerns raised by DOJ and Commission staff. Specifically, Amendment No. 1, among other things, proposed to cap the Market-Maker Surcharge at $0.25 per contract, to grant the authority to impose the Surcharge to the Committee rather than to the Resident Market-Makers, and to operate the proposal as a pilot program. Because the amendment responds to the Commission's concerns and those of DOJ, the Commission believes that it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment No. 1 to the proposal on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1 to the rule proposal, including whether the amendment 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 at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–98–35 and should be submitted by March 24, 1999.

VI. Conclusion

I is therefore ordered, pursuant to Section 19(b)(2) of the Act,[39] that the proposed rule change (SR–CBOE–98–35) as amended is approved through March 31, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[40]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–5719 Filed 3–8–99; 8:45 am]

BILLING CODE 8010–01–M

[38] *See* Amendment No. 1, *supra* note 5.

[39] 15 U.S.C. 78s(b)(2).

[40] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41120; File No. SR–CSE–98–04]

Self-Regulatory Organizations; Cincinnati Stock Exchange, Inc.; Order Approving Proposed Rule Change to Reduce its Public Agency Guarantee Size

February 26, 1999.

I. Introduction

On October 26, 1998 [1] the Cincinnati Stock Exchange, Inc. (''CSE'' 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'')[2] and Rule 19b-4 thereunder,[3] a proposed rule change to reduce the CSE public agency guarantee size. Notice of the proposal appeared in the **Federal Register** on January 7, 1999.[4] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of Proposal

The Exchange proposed to amend the public agency guarantee in CSE Rules 11.9(c)(v) and (n). CSE Rules 11.9(c)(v) and (n) provide an execution guarantee for public agency market and marketable limit orders. Currently, public agency orders up to the size of the lesser of the national best bid or offer (''NBBO'') or 2099 shares are guaranteed. No portion of an order larger than 2099 shares is subject to the guarantee. The Exchange proposed to lower the maximum order size of its public agency guarantee. The proposed rule change would lower the size of the public agency guarantee to the lesser of the NBBO or 1099 shares. The public agency guarantee would otherwise remain unchanged.

The Exchange believes that its specialists are exposed to adverse risk in a more volatile trading environment due to higher volume levels and the National Market System change to quoting and trading securities in increments less than 1/8th of a dollar. The Exchange believes that lowering the public agency guarantee will lower the risk its specialists currently experience to a reasonable level. Additionally, the Exchange represents that lowering the public agency guarantee from 2099 to 1099 shares should not significantly impact customers since the majority of customer orders are less than 1000 shares.[5]

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 [6] and, in particular, the requirements of Section 6.[7] The Commission believes that the proposal is consistent with the provisions of Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system. The Commission believes that the proposal should reduce the risk experienced by the Exchange's specialists without significantly affecting the proper execution of public agency orders. Thus, the Commission concludes that the proposal will strike an appropriate balance between the risk incurred by the Exchange's specialists during a volatile trading environment and the policy to ensure the best possible execution of orders for public investors. Therefore, the Commission believes that lowering the size of the

[1] The Exchange initially filed this proposal on October 26, 1998. However, on November 12, 1998, the Exchange filed Amendment No. 1 the substance of which was incorporated into the notice.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b-4.

[4] Securities Exchange Act Release No. 40843 (December 28, 1998), 64 FR 1048.

[5] Telephone conversation between David Colker, President, CSE, and John Roeser, Attorney, Division of Market Regulation, SEC on February 25, 1999.

[6] 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).

[7] 15 U.S.C. 78f.

public agency guarantee to the lesser of the NBBO or 1099 shares is reasonable and consistent with the Act.

IV. Conclusion

For the foregoing reasons, the Commission believes that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5).[8]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–CSE–98–04) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–5720 Filed 3–8–99; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending February 26, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–99–5136
Date Filed: February 23, 1999
Parties: Members of the International Air Transport Association
Subject:
PTC2 EUR–AFR 0067 dated February 19, 1999 r1
PTC2 EUR–AFR 0068 dated February 19, 1999 r2
PTC2 EUR–AFR 0069 dated February 19, 1999 r3
PTC2 EUR–AFR 0070 dated February 19, 1999 r4
Europe-Africa Expedited Passenger Resolutions
Intended effective date: March 15, 1999.

Docket Number: OST–99–5138
Date Filed: February 23, 1999
Parties: Members of the International Air Transport Association
Subject:
PTC23 EUR–SEA 0065 dated December 18, 1998
Europe-Southeast Asia Resolutions r1–30
Minutes—PTC23 EUR–SEA 0069 dated February 19, 1999
Tables—PTC23 EUR–SEA Fares 0014 dated January 12, 1999
Corrections—PTC23 EUR–SEA 0066 dated January 12, 1999
PTC23 EUR–SEA 0068 dated February 9, 1999
PTC23 EUR–SEA Fares 0015 dated January 22, 1999
PTC23 EUR–SEA Fares 0016 dated February 5, 1999
r–1—001LL r–11—058b r–21—078g
r–2—001ss r–12—059b r–22—078i
r–3—002 r–13—065b r–23—078o
r–4—014a r–14—065bb r–24—081bb
r–5—017c r–15—068b r–25—081p
r–6—015v r–16—069b r–26—081v
r–7—045b r–17—071hh r–27—084cc
r–8—048b r–18—071z r–28—084h
r–9—049b r–19—072x r–29—084jj
r–10—055b r–20—076tt r–30—086c
Intended effective date: April 1, 1999.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–5745 Filed 3–8–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending February 26, 1999

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–99–5133.
Date Filed: February 22, 1999.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 22, 1999.
Description: Application of AvAtlantic Airlines, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart Q, requests authority to engage in scheduled air transportation of persons, property and mail between a state, territory, or possession of the United States.

Docket Number: OST–99–5134.
Date Filed: February 22, 1999.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 22, 1999.
Description: Application of AvAtlantic Airlines, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart, requests authority to engage in foreign charter air transportation of persons, property and mail.

Docket Number: OST–99–5140.
Date Filed: February 23, 1999.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 23, 1999.
Description: Joint Application of Fine Air Services Corp. and Arrow Air, Inc. pursuant to 49 U.S.C. Section 41105 and Subpart Q, applies for approval of the de facto transfer of the certificates and other economic authorities now held by Arrow to Fine Corp.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–5746 Filed 3–8–99; 8:45 am]

BILLING CODE 4910–62–P 2

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Research and Special Programs Administration

Notification of Department-wide Program Evaluation of the Hazardous Materials Transportation Program

AGENCY: Office of Inspector General and Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice.

SUMMARY: DOT is announcing the initiation of an internal Department-wide Program Evaluation of the Hazardous Materials Transportation Programs (HM Program Evaluation). This DOT-wide Program Evaluation is being led by the department's Office of Inspector General and RSPA. The objectives of the HM Program Evaluation are to document and assess the modal hazardous materials programs within the Department, and determine whether these programs can be accomplished more effectively and efficiently. The results of the ongoing HM Program Evaluation will be reported to the public in DOT's FY 1999 Program Performance Report no later than March 31, 2000.

FOR FURTHER INFORMATION CONTACT: Jackie Goff, 202–493–0326, or George

Whitney, 202–366–4831, Co-Chairs, HM Program Evaluation Team, U.S. Department of Transportation; 400 Seventh Street SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

The Government Performance and Results Act (GPRA) requires agencies to develop a schedule of program evaluations for inclusion in their strategic plans. The Department has initiated a Department-wide Program Evaluation of the Hazardous Materials Transportation Program that was included in the DOT Strategic Plan 1997–2002. The overall purpose of any program evaluation is to provide a means to objectively assess the extent to which a program is contributing to certain outcome goals and trends. Together with performance measures to track our ongoing progress in achieving a goal, the results of program evaluations may be used as a management tool to assist us in better understanding our progress toward achieving a stated goal. Building on the list provided in the DOT Strategic Plan, the Department has identified 30 program evaluations in its Performance Plan for FY 2000. DOT's aim is to emphasize program evaluations that: (1) represent significant DOT activities contributing to our strategic goals; (2) are cross modal in nature, or would benefit from evaluation that is reviewed outside any single Operating Administration; and (3) would benefit from Department-wide expertise and assistance during planning and review. This Program Evaluation meets all three of these aims. Collectively, our goal is to produce a Program Evaluation that is both credible and useful, meeting both the letter and spirit of GPRA.

The Office of Inspector General (OIG) and the Research and Special Programs Administration (RSPA) are jointly leading this ''ONE DOT'' activity to benefit the public and DOT. The HM Program Evaluation is staffed by 10 full-time persons, including at least one full-time person from the OIG and RSPA and each of the following Operating Administrations: the United States Coast Guard; the Federal Aviation Administration; the Federal Highway Administration; and the Federal Railroad Administration. The results of the ongoing HM Program Evaluation will be reported to the public in DOT's FY 1999 Program Performance Report no later than March 31, 2000.

II. Purpose and Objective

The purpose of the HM Program Evaluation is to examine the Federal hazardous materials transportation law, the program structure defined by the delegation of authority within DOT, and to assess program delivery. The HM Program Evaluation is intended to allow DOT to determine the effectiveness of the current hazardous material programs, including the division of responsibilities across and within modes, and the allocation of resources dedicated to specific functions. This positions DOT to potentially increase safety and environmental protection when hazardous materials are in commerce.

The HM Program Evaluation has two objectives. First, it will document current hazardous materials movements, programs, and program delivery. Second, it will assess the effectiveness of the hazardous materials programs as they intervene in and affect each step in the hazardous materials transportation process—from packaging manufacturer to destination. Each of the key elements of these objectives is enumerated below.

A. Documentation of current hazardous materials activities will include:

1. A description of the system of hazardous materials movement in commerce and of the forecast trends in hazardous materials transportation.

2. A description of what DOT's hazardous materials program is intended to be as required by law and regulation, identifying key components.

3. A description of what occurs in program delivery, documenting program implementation as applied to the system of hazardous materials movements in commerce. This will include an exposition of the points at which the current hazardous materials programs intervene in the transportation of hazardous materials, from packaging manufacturer, to offeror, to carrier, to receiver, and how intervention tools (regulation, education, training, outreach, compliance, and enforcement) are applied at each point.

B. Analysis of program intervention and alternatives will include:

1. An examination of candidate measures and outcomes that would indicate the effectiveness of DOT's hazardous materials program, including current performance goals and measures, as well as measures which further specify goals, or which provide a better measure of hazardous materials transportation safety.

2. A critique of the current intervention approach. The HM Program Evaluation will consider all of the possible intervention points, to determine if the current approach is the most effective one for achieving adequate safety and environmental protection. The analysis will address how effectively intervention tools are applied at each point.

3. Presentation of findings, conclusions and recommendations to the Secretary of Transportation.

III. Scope of the HM Program Evaluation

The scope of the HM Program Evaluation will be limited to those activities covered by 49 CFR Parts 106 (Rulemaking Procedures) and 107 (Hazardous Materials Program Procedures), and the Hazardous Materials Regulations (HMR), 49 CFR Parts 171–180, as authorized by the Federal hazardous materials transportation law to provide adequate protection against the risks to life and property inherent in the transportation of hazardous materials in commerce. By definition, hazardous materials transported in pipelines or bulk shipment by water, such as oil or liquefied petroleum gas tank vessels, are not within the scope of the HM Program Evaluation.

The HM Program Evaluation will focus on cross modal issues. It will include a review of compliance, education, training, outreach activities, regulations (including exemptions and approvals), and relevant aspects of DOT's internal rulemaking process. Also included will be a determination of whether the current HMR achieves the stated purpose of the Federal hazardous materials transportation law. International shipments of hazardous materials will be included to permit a review of the International Maritime Dangerous Goods Code (IMDG) and the International Civil Aviation Organization's Technical Instructions on the Transportation of Dangerous Goods by Air (ICAO), both of which are authorized by HMR as alternative standards for many of the requirements in the HMR for shipments destined for export or that are being imported.

IV. Participation by Interested Parties

The team anticipates that a request for comments will be published in the **Federal Register** shortly and will serve as the primary means to involve the public. The request for comments will present a series of questions within the scope of the HM Program Evaluation as described in section III of this notice. When the request for comments is published, interested parties should take this opportunity to respond to these questions, provide supporting documentation and their overall observations of the Department's Hazardous Materials Program. Interested parties will be provided an opportunity

to submit responses in writing or electronically. The comments received in response to the notice will assist in determining areas and issues for indepth review.

Issued in Washington, DC, on March 4, 1999.

Jackie Goff,

Co-Chair, Hazardous Materials Program Evaluation Team.

George Whitney,

Co-Chair, Hazardous Materials Program Evaluation Team.

[FR Doc. 99–5756 Filed 3–8–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–5179]

National Offshore Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The National Offshore Safety Advisory Committee (NOSAC) will meet to discuss various issues relating to offshore safety. The meeting will be open to the public.

DATES: NOSAC will meet on Thursday, April 8, 1999, from 8:30 a.m. to 2:30 p.m. The meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before March 25, 1999. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before March 25, 1999.

ADDRESSES: NOSAC will meet in rooms 6244–6248, of the NASSIF Building, 400 7th Street, SW, Washington, DC. Send written material and requests to make oral presentations to Captain R. L. Skewes, Commandant (G–MSO), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Captain R. L. Skewes, Executive Director of NOSAC, or Mr. Jim Magill, Assistant to the Executive Director, telephone 202–267–0214, fax 202–267–4570. For questions on viewing the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, 202–366–9329.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

National Offshore Safety Advisory Committee (NOSAC). The agenda includes the following:

(1) Introduction and swearing-in of new members.

(2) Progress report from the Prevention Through People Subcommittee.

(3) Progress report from the Subcommittee on Pipeline-Free Anchorages for Mobile Offshore Drilling Units, Liftboats and Vessels.

(4) Status report on revision of 33 CFR Subchapter ''N'', Outer Continental Shelf Regulations.

(5) Report on the new regulations for large offshore supply vessels and crewboats, (supplementary 46 CFR Subchapter ''L'').

(6) Report on issues concerning the International Maritime Organization (IMO) and the International Organization of Standardization (ISO).

(7) Status report from Incident Reporting Subcommittee.

(8) Report from Platform/Ship Collision Avoidance Subcommittee.

(9) MODUs—U.S. Flag to Foreign Flag Movement.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Executive Director no later than March 25, 1999. Written material for distribution at the meeting should reach the Coast Guard no later than March 25, 1999. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of the meeting, please submit 25 copies to the Executive Director no later than March 25, 1999.

Information on Services for Individuals with Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: February 22, 1999.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 99–5747 Filed 3–8–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub–No. 204X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Mecklenburg County, NC

Norfolk Southern Railway Company (NS) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon 2.87 miles of its line of railroad between milepost R-O.13 and milepost R–3.0 in Charlotte, Mecklenburg County, NC. The line traverses United States Postal Service Zip Codes 28209 and 28227.

NS has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) there has been no overhead traffic on the line during the past 2 years and any overhead traffic could be rerouted over other lines; (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 April 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

[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.

1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by March 19, 1999. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 29, 1999, 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: James R. Paschall, General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

NS 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 March 12, 1999. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, 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), NS 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 NS's filing of a notice of consummation by March 9, 2000, 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: March 2, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–5486 Filed 3–8–99; 8:45 am]

BILLING CODE 4915–00–P

[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).

DEPARTMENT OF THE TREASURY

Departmental Offices; Proposed Collections; Comment Requests

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on an information collection that is due for renewed approval by the Office of Management and Budget. The Office of Program Services within the Department of the Treasury is soliciting comments concerning Treasury International Capital Form S, Purchases and Sales of Long-term Securities by Foreigners.

DATES: Written comment should be received on or before May 10, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Dwight Walkow, Administrator, International Portfolio Investment Data Systems, Department of the Treasury, Room 5205, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Dwight Walkow, Administrator, International Portfolio Investment Data Systems, Department of the Treasury, Room 5205, 1500 Pennsylvania Avenue NW, Washington DC 20220, (202) 622–1276.

SUPPLEMENTARY INFORMATION:

Title: Treasury International Capital Form S. Purchases and Sales of Long-term Securities by Foreigners.

OMB Number: 1505–0001.

Abstract: Form S is part of the Treasury International Capital (TIC) reporting system, which is required by law (22 USC 286f; 22 USC 3103; EO 10033; 31 CFR 128), and is designed to collect timely information on international portfolio capital movements. Form S is a monthly report used to cover transaction in long-term marketable securities undertaken DIRECTLY with foreigners by banks, other depository institutions, brokers, dealers, underwriting groups and other individuals and institutions. This information is necessary for compiling the U.S. balance of payments accounts, for calculating the U.S. international investment position, and for use in formulating U.S. international financial and monetary policies.

Current Actions: No changes to reporting requirements for the form are proposed at this time.

Type of Review: Extension.

Affected Public: Business or other for-profit organizations.

Form S (1505–0001).

Estimated Number of Respondents: 425.

Estimated Average Time per Respondent: 5 hours per respondent per filing.

Estimated Total Annual Burden Hours: 25,500 hours, based on 12 reporting periods per year.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the requests for OMB approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: whether Form S is necessary for the proper performance of the functions of the Office, including whether the information collected has practical uses; the accuracy of the above burden estimates; ways to enhance the quality, usefulness, and clarity of the information to be collected; ways to minimize the reporting and/or record keeping burdens on respondents, including the use of information technologies to automate the collection of the data; and estimates of capital or start-up costs of operation, maintenance, and purchases of services to provide information.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Systems.

[FR Doc. 99–5753 Filed 3–8–99; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Customs Services

[T.D. 99–23]

Cancellation of Customs Broker License

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Cancellation of License.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 111.51(a), the following Customs broker licenses have been canceled due to the death of the broker.

Name	Port	License No.
John S. Perroncino	New York	5504
David Wesley Shenk	Los Angeles	4045
Michael K. Fettkether	Los Angeles	9391

Dated: March 3, 1999.

Philip Metzger,

Director, Trade Compliance.

[FR Doc. 99–5716 Filed 3–8–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 99–22]

Retraction of Revocation Notice

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General Notice.

SUMMARY: The following Customs broker license numbers were erroneously included in a published list of revoked Customs brokers licenses in the **Federal Register**.

Cleopatra D. Trevilcock: 15408
Susan DiCarlo: 11689
Kathleen M. Futak: 4947
Wendy Webster: 12737

Licenses 15408, 11689, 4957 and 12737 are valid licenses.

Dated: March 3, 1999.

Philip Metzger,

Director, Trade Compliance.

[FR Doc. 99–5717 Filed 3–8–99; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations: ''Project 68: William Kentridge''

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations; Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 F.R. 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 F.R. 27393, July 2, 1985). I hereby determine that the objects to be included in the exhibit ''Projects 68: William Kentridge,'' imported from abroad for temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the Museum of Modern Act, New York, New York, from on or about April 13, 1999, to on or about June 8, 1999, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For a copy of the list of exhibit objects or for further informaiton, contact Paul Manning, Assistant General Counsel, Office of the General Counsel, United States Information Agency, at 202/619–5997, or USIA, 301 4th Street, S.W., Room 700, Washington, D.C. 20547–0001.

Dated: March 4, 1999.

Les Jin,

General Counsel.

[FR Doc. 99–5813 Filed 3–8–99; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register

Vol. 64, No. 45

Tuesday, March 9, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

Correction

In notice document 99–5095, beginning on page 10147, in the issue of Tuesday, March 2, 1999, make the following correction(s):

1. On page 10149, in the first table, the first text entry ''Fluorescent lamp ballast'' should read ''Fluorescent lamp ballasts''.

2. On page 10150, in the first column, in the second full paragraph, in the 11th and 12th lines, ''(74,599×192)'' should read ''(74,599+192)''.

[FR Doc. C9–5095 Filed 3–8–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 274a

[INS No. 1947–98]

RIN 1115–AE94

Interim Designation of Acceptable Receipts for Employment Eligibility Verification

Correction

In rule document 99–3021 beginning on page 6187 in the issue of Tuesday, February 9, 1999, make the following corrections:

1. On page 6188, in the first column, in the 30th line, ''552'' should read ''551''.

2. On the same page, in the same column, in the 35th line, ''552'' should read ''551''

§ 274a.2 [Corrected]

3. On page 6189, in the first column in § 274a.2(b)(1)(vi)(B)(*2*), in the second line, ''Form'' should be removed.

4. On the same page in the second column in § 274a.2(b)(1)(vi)(C)(*1*), in the second line ''the'' should be removed.

[FR Doc. C9–3021 Filed 3–8–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–375–AD; Amendment 39–11060; AD 99–05–12]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –300, –400, and –500 Series Airplanes

Correction

In rule document 99–5042, beginning on page 10213, in the issue of Wednesday, March 3, 1999, make the following correction:

On page 10213, in the third column, in the **DATES:** section, in the fifth line, ''May 3'' should read ''March 18''.

[FR Doc. C9–5042 Filed 3–8–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–14]

Proposed Modification of Class D Airspace and Class E Airspace; Wilmington, OH

Correction

In proposed rule document 99–5253, beginning on page 10241, in the issue of Wednesday, March 3, 1999, make the following corrections:

§ 71.1 [Corrected]

1. On page 10242, in the first column, in § 71.1, under the heading **AGL OH E4 Wilmington, OH [Revised]**, in the fourth line, ''Lat. 39° 26′ 16″ N.'' should read ''Lat. 39° 26′ 15″ N.''.

2. On the same page, in the same column, in § 71.1, under the same heading, in the sixth line, ''Lat. 39° 26′ 47″ N.'' should read ''Lat. 39° 25′ 47″ N.'', and ''long. 083° 48′ 94″ W.'' should read ''long. 083° 48′ 04″ W.''.

3. On the same page, in the same column, in § 71.1, under the same heading, in the 10th line, ''4.1-mile'' should read ''4.2-mile''.

[FR Doc. C9–5253 Filed 3–8–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–16]

Proposed Modification of Class E Airspace; Muskegon, MI

Correction

In proposed rule document 99–5255, beginning on page 10239, in the issue of Wednesday, March 3, 1999, make the following correction:

§ 71.1 [Corrected]

On page 10241, in the first column, in § 71.1, under the heading **AGL MI E2 Muskegon, MI [Revised]**, in the fourth line, after ''Airport'' add ''and''.

[FR Doc. C9–5255 Filed 3–8–99; 8:45 am]

BILLING CODE 1505–01–D

federal register

Tuesday
March 9, 1999

Part II

Environmental Protection Agency

40 CFR Parts 60 and 63

Polymer and Resin Production Facilities (Groups I and IV) and Volatile Organic Compound (VOC) From the Polymer Manufacturing Industry; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[AD–FRL–6301–6]

RIN 2060–AH–47

National Emission Standards for Hazardous Air Pollutants Emissions: Group I Polymers and Resins and Group IV Polymers and Resins and Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On September 5, 1996, the EPA issued the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Group I Polymers and Resins (61 FR 46906); on September 12, 1996, the EPA issued the Group IV Polymers and Resins NESHAP (61 FR 48208); and on December 11, 1990, the EPA issued the Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry (55 FR 51035). This action revises the promulgated rules by adding provisions, correcting errors, and making clarifications in all of the above-mentioned rulemakings, as described in the remainder of this document.

DATES: The direct final rule is effective May 10, 1999 without further notice unless the Agency receives relevant adverse comments by April 8, 1999. (However, see information on the public hearing below.) Should the Agency receive such comments, it will publish a timely withdrawal informing the public that this rule will not take effect.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by March 19, 1999, a public hearing will be held in Research Triangle Park, North Carolina, beginning at 10 a.m. on March 23, 1999. Persons interested in attending the hearing should call Ms. Marguerite Thweatt at (919) 541–5673 to verify that a hearing will be held. If a hearing is requested, written comments must be received by April 23, 1999.

ADDRESSES: Written comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–92–44 (Group I Polymers and Resins) and/or Docket Number A–92–45 (Group IV Polymers and Resins), Room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The EPA requests that a separate copy of each public comment be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**). Comments may also be submitted electronically by following the instructions provided in **SUPPLEMENTARY INFORMATION.**

Docket. Docket numbers A–92–44 and A–92–45, containing information relevant to this Direct Final Rule, are available for public inspection between 8 a.m. and 5:30 p.m., Monday through Friday (except for Federal holidays) at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (MC–6102), 401 M Street, SW, Washington, DC 20460. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor). Alternatively, a docket index, as well as individual items contained within the docket, may be obtained by calling (202) 260–7548 or (202) 260–7549. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Robert E. Rosensteel, Organic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5608.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this direct final rule include:

Category	Examples of regulated entities
Industry	Butyl Rubber, Halobutyl Rubber, Epichlorohydrin Elastomer, Ethylene Propylene Rubber, Hypalon™, Neoprene, Nitrile Butadiene Rubber, Nitrile Butadiene Latex, Polybutadiene Rubber, Styrene-Butadiene Rubber or Latex, Acrylonitrile Butadiene Styrene Resin, Styrene Acrylonitrile Resin, Methyl Methacrylate Acrylonitrile Butadiene Styrene Resin, Methyl Methacrylate Butadiene Styrene Resin, Poly(ethylene terephthalate) Resin, Polystyrene Resin, Nitrile Resin, Polypropylene and polyethylene producers

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether your facility is regulated by this direct final rule, you should carefully examine the applicability criteria in §§ 63.480 and 63.1310 of the promulgated rules. If you have any questions regarding the applicability of this direct final rule to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Electronic Access and Filing Addresses

This document, the promulgated texts, and other background information are available in Docket Numbers A–92–44 and A–92–45 or by request from the EPA's Air and Radiation Docket and Information Center (see **ADDRESSES**). These documents can also be accessed through the EPA web site at: http://www.epa.gov/ttn/oarpg. For further information and general questions regarding the Technology Transfer Network (TTN), call Mr. Hersch Rorex (919) 541–5637 or Mr. Phil Dickerson (919) 541–4814.

Electronic comments and data may be submitted by sending electronic mail (e-mail) to: a-and-r-docket@epamail.epa.gov. Submit comments as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on diskette in Word Perfect 5.1 or 6.1 or ACSII file format. Identify all comments and data in electronic form by the docket numbers A–92–44 and/or A–92–45. No Confidential Business Information (CBI) should be submitted through electronic mail. Electronic comments may be filed online at many Federal Depository Libraries. For additional information concerning comments, see the parallel proposal action found in the Proposed Rules section of this **Federal Register**.

Outline

The information presented in this preamble is organized as follows:

I. Background
II. Summary of and Rationale for Revisions
A. Correction to Equation in § 60.564
B. Modification of Compressors
C. Compliance Extension for Compressors
D. Changes to the 20 ppmv Organic HAP Outlet Concentration Option for Group 1 Continuous Process Vents
E. Addition of New PET Compliance Options
F. Clarification of the Term ''Primary Condenser''

G. References to Test Methods for the Polymers and Resins I Rule
H. Cross-reference and Grammatical Corrections in Emissions Averaging Provisions
I. Removal of Reference to Obsolete HON Table
J. Clarification to Group 1 Storage Vessel Requirements in Subpart JJJ
K. Process Vent Provisions for Affected Sources Producing Acrylonitrile Styrene Acrylate Resin/Alpha Methyl Styrene Acrylonitrile Resin (ASA/AMSAN)
L. Exemptions from Wastewater Provisions in Subpart JJJ
M. Amendments to Tables 3 and 5 of Subpart JJJ
III. Impacts
IV. Administrative Requirements
A. Docket
B. Executive Order 12866
C. Executive Order 12875: Enhancing Intergovernmental Partnerships
D. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
E. Unfunded Mandates Reform Act
F. Regulatory Flexibility
G. Paperwork Reduction Act
H. Applicability of Executive Order 13045
I. Submission to Congress and the Comptroller General
J. National Technology Transfer and Advancement Act

I. Background

On September 5, 1996 (61 FR 46906), and September 12, 1996 (61 FR 48208), the EPA published the Group I Polymers and Resins NESHAP and the Group IV Polymers and Resins NESHAP, respectively. These regulations were promulgated as subparts U and JJJ in 40 CFR part 63. On November 25, 1996 the EPA published an Advance Notice of Proposed Rulemaking (ANPR) (61 FR 59849) informing the public of the intent to propose amendments to the recently promulgated Group I Polymers and Resins NESHAP and Group IV Polymers and Resins NESHAP.

Although it is anticipated that the amendments to the Group I and Group IV Polymers and Resins NESHAP will be published simultaneously with this Direct Final Rule, it is not likely that those amendments will be finalized prior to Spring 1999. For that reason, the EPA is publishing this direct final rule, which, as long as no relevant adverse comments are received by April 8, 1999, will become effective immediately (without further rulemaking action) on May 10, 1999. If adverse comments are received on one or more of the distinct amendments, paragraphs, or sections in this rulemaking, the EPA will publish a timely withdrawal in the **Federal Register** withdrawing the specific provisions that are the subject of adverse comment. Any provision in today's rulemaking that does not receive adverse comment will become effective on the date set out above, notwithstanding any adverse comment on any other distinct provision in today's rulemaking. The EPA is publishing this rule as a direct final rule because the EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, should adverse comments be received on a distinct provision in this rulemaking, the EPA will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn. If part or all of this Direct Final Rule is withdrawn, all public comments received will be addressed in a subsequent final rule based on today's proposal. The nature of the changes contained in today's direct final rule are such that it will be of great benefit to industry and the States for these changes to become effective sooner rather than later, as will be described in more detail below.

II. Summary of and Rationale for Revisions

A. Correction to Equation in § 60.564

The first correction that this direct final rule makes is to an equation in § 60.564 of the Standards for Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry (subpart DDD). The equation in § 60.564(h) is being corrected so that the emission rate determined by the equation is actually in kg total organic compound (TOC) per Mg product. During work on the other changes contained in this direct final rule, the EPA became aware that the promulgated version of the equation in § 60.564(h) misplaced the conversion factor between kilograms and megagrams, resulting in an erroneous production rate of polymer. The corrected equation results in the correct units for the emission rate of TOC (i.e., kg TOC/Mg product).

B. Modification of Compressors

The remainder of the changes contained in this Direct Final Rule are either in the Group I Polymers and Resins NESHAP, in the Group IV Polymers and Resins NESHAP, or both. The NESHAP for Group I Polymers and Resins and for Group IV Polymers and Resins omitted a provision that is contained in the Hazardous Organics NESHAP (HON), 40 CFR part 63, subpart H, on which these provisions are based. This provision, as added at §§ 63.481(d)(1)(iv) and 63.1311(d)(1)(iv), specifies another criterion to be considered in determining the compliance data for compressors.

C. Compliance Extension for Compressors

This direct final rule includes new language in § 63.1311(d)(4), as § 63.1311(d)(4)(ii), which corrects an error in the promulgated paragraph. At promulgation, this paragraph identified two situations in which a compliance extension could be requested. These situations are if the compressor must be replaced or the distance piece must be recast. A third situation (which was included in subpart U, as § 63.481(d)(4)(iii)) should have been included, which is if a design modification is required to connect the compressor to a closed-vent or recovery system. As part of adding this third situation, the paragraph was reorganized to improve the clarity.

D. Changes to the 20 ppmv Organic HAP Outlet Concentration Option for Group 1 Continuous Process Vents

Several changes have been made related to the 20 ppmv organic HAP outlet concentration compliance option for Group 1 continuous process vents subject to §§ 63.485 or 63.1315, which reference to the HON process vent requirements in §§ 63.113 through 63.118. The outlet concentration limit of 20 ppmv represents the performance limit of the control technology (see 61 FR 43698, August 26, 1996, pg. 43704 for more details). When determining compliance with the 20 ppmv outlet concentration standard under §§ 63.485 or 63.1315, the promulgated rule required that the outlet concentration be corrected to 3 percent oxygen. The changes made in this direct final rule only require a correction to 3 percent oxygen if supplemental combustion air is used to combust the emissions. A definition of supplemental combustion air has also been added. Finally, similar language has been added as part of adding a 20 ppmv outlet concentration compliance option to the aggregate batch vent stream provisions. The addition of a 20 ppmv organic HAP outlet concentration compliance option for aggregate batch vent streams is discussed later in this preamble.

The Polymers and Resins I and IV rules refer directly to the HON for control of continuous process vents subject to §§ 63.485 or 63.1315. Both rules (Polymers and Resins I and IV) refer to, and are based on, the HON process vent requirements for aggregate batch vent streams. Under the HON, the correction to 3 percent oxygen is

required for purposes of demonstrating compliance with the 20 ppmv outlet concentration standard. The purpose of correcting an outlet concentration to 3 percent oxygen is to prevent owners or operators from diluting streams to meet the 20 ppmv outlet concentration standard; dilution as a means of complying with a part 63 standard is prohibited by the General Provisions (see § 63.4(b)). The value of 3 percent originates from good engineering practices. Synthetic Organic Chemical Manufacturing (SOCMI) facilities subject to the HON do not typically have high oxygen, low VOC/HAP concentration streams; streams from SOCMI unit operations are typically low oxygen, high VOC/HAP concentration streams that require supplemental combustion air for purposes of combusting the emissions. For such oxygen deficient vent streams, adding the proper amount of supplemental combustion air would result in the outlet stream containing approximately 3 percent oxygen. The HON continuous process vent provisions are written assuming that continuous process vents will require supplemental combustion air when they are combusted, and therefore requires a 3 percent oxygen correction for all continuous process vents to prevent dilution.

The concept of requiring the correction to 3 percent oxygen only when supplemental combustion air is used, as is done in this direct final rule has a precedent in the Polymer Manufacturing New Source Performance Standards (NSPS). During development of the Polymer Manufacturing NSPS, the issue of requiring a high oxygen, low VOC concentration stream to correct the outlet concentration to 3 percent oxygen was raised. Commenters made the point that an oxygen correction may be appropriate for oxygen deficient streams where supplemental combustion air has been added in order to ensure combustion of the emissions, but such a correction is not appropriate for high oxygen, low VOC concentration streams. Review of this concern revealed that requiring an oxygen correction for processes with inherently high oxygen concentration streams would amount to taking away the compliance option of reaching the 20 ppmv outlet concentration. Because the combination of low VOC/HAP concentration and technology limitations of control devices sometimes make it impossible to achieve a 98 percent emission reduction, the 20 ppmv outlet concentration may be necessary for some streams. For the group of streams that cannot demonstrate a 98 percent emission reduction, failure to address this issue would make it impossible for owners or operators to demonstrate compliance. As a result of these considerations, the final rule for the Polymer Manufacturing NSPS was changed to require a correction to 3 percent oxygen only if supplemental combustion air was used to combust the emissions.

The EPA has determined that a similar amendment is appropriate for the Polymers and Resins I and IV rules. Accordingly, the EPA has conducted a technical analysis to provide additional support for this decision. The technical analysis is documented in a memorandum to the project docket. The analysis found that an oxygen correction had not been applied to the data used to develop the 20 ppmv outlet concentration standard. Therefore, the 20 ppmv value is appropriate as an outlet concentration standard for uncorrected outlet concentrations (i.e., streams that do not require supplemental combustion air). This amendment does not alter the use of the 20 ppmv value compliance option where supplemental combustion air is used, provided, as with the promulgated rule, a 3 percent oxygen correction is made. Because the proper addition of supplemental combustion air should result in an oxygen outlet concentration of approximately 3 percent, requiring a correction to 3 percent oxygen should not change the outlet concentration of VOC/HAP significantly, and will ensure that the 20 ppmv outlet concentration standard will not be met through dilution.

In conclusion, the Polymers and Resins I and IV rules regulate industries (i.e., elastomer producers and thermoplastic producers, respectively) that may contain high oxygen, low VOC/HAP concentration process vent streams (e.g., streams that do not require supplemental combustion air such as vent streams from dryers), as well as low oxygen concentration streams. Therefore, for the same reason that a change was made to the Polymer Manufacturing NSPS and based on the support provided by the technical analysis described above, a provision to require an outlet concentration oxygen correction only when supplemental combustion air is used has been added to the continuous process vent provisions (i.e., §§ 63.485 and 63.1315) for the Polymers and Resins I and IV rules. Similar changes have been made to the aggregate batch vent stream provisions, as part of adding a 20 ppmv outlet concentration compliance option to those provisions.

Definitions of ''supplemental combustion air'' and ''combustion device burner''. The EPA has added a definition of supplemental combustion air that reads as follows:

> *Supplemental combustion air* means the air that is added to a vent stream after the vent stream leaves the unit operation. Air that is part of the vent stream as a result of the nature of the unit operation is not considered supplemental combustion air. Air required to operate combustion device burner(s) is not considered supplemental combustion air.

In adding this definition, the EPA is distinguishing supplemental combustion air from dilution air and from air required to operate the combustion device burner(s). The second sentence of the definition clarifies that a vent stream can contain air that is *not* considered to be ''supplemental combustion air,'' as long as the air is part of the vent stream prior to the vent stream leaving the unit operation. This clarification ensures that processes operating at ambient or near ambient oxygen levels are not considered to be using supplemental combustion air. An example of this kind of process is a dryer, where very high flow rates of ambient air are heated and blown over/through/around polymer that is being dried and very low levels of HAP are picked up as part of the drying process. The third sentence of the definition clarifies that air used to operate combustion device burner(s) is not considered supplemental combustion air. Failure to include this clarification could allow the interpretation that every combustion device uses supplemental combustion air. To further clarify the meaning of this third sentence, the EPA has added a definition of combustion device burner that reads as follows:

> *Combustion device burner* means a device designed to mix and ignite fuel and air to provide a flame to heat and oxidize waste organic vapors in a combustion device.

The EPA is not amending the reference in these rules to the General Provisions prohibition against dilution to prevent compliance through dilution. Section 63.4(b), Circumvention, discusses the prohibition against dilution, and specifically prohibits ''the use of diluents to achieve compliance with a relevant standard based on the concentration of a pollutant in the effluent discharged to the atmosphere.''

E. Addition of New PET Compliance Options

Section 63.1316(b), which specifies control requirements for certain continuous process vents at

poly(ethylene terephthlate) (PET) affected sources, has been amended to add compliance options based on the use of combustion devices; combustion controls allowed in other sections of this rule assure highly efficient reduction of emissions. The changes to § 63.1316(b) contained in this direct final rule will provide the same option for owners or operators of continuous dimethyl terephthalate (DMT) PET processes and continuous terephthalic acid (TPA) PET processes.

The need for these changes became apparent when a request was received from a company (Docket A–92–45, item VI–A–12) that wanted to comply with the continuous process vent requirements of § 63.1316(b) using combustion controls. In one situation, the company is controlling continuous process vents from a continuous DMT PET process with a boiler that acheives a 99.99 percent emission reduction, based on emission tests conducted by the EPA. In this case, emissions are reduced to a much greater extent than the promulgated rule requires, and wastewater streams from the process are also eliminated. In the second case, the company is controlling continuous process vents from a continuous TPA PET process with a catalytic incinerator that achieves 98 percent emission reduction. Wastewater discharges from the process are eliminated in the second case, as well. Analysis shows that emissions are reduced to a greater extent with the control systems described above than would be achieved through compliance with the separate, promulgated process vent and wastewater provisions (Docket A–92–45, Item VI–B–22).

Therefore, the EPA believes that the same combustion control options (including, but not limited to, thermal incinerators, catalytic incinerators, boilers, or process heaters) that are allowed elsewhere in this rule (for example in § 63.1316(c) for polystyrene affected sources) should be provided in § 63.1316(b), since these combustion devices are highly efficient techniques for reducing organic HAP emissions. Also, the application of these combustion techniques allows innovative control strategies, including pollution prevention measures such as those described above, which might otherwise be discouraged under the promulgated rule.

F. Clarification of the Term ''Primary Condenser''

In both the Group I and the Group IV Polymers and Resins NESHAP, this Direct Final Rule is amending language in order to clarify what these rules mean by the term ''primary condenser.'' This change is being made in §§ 63.488(a)(2) and 63.1323(a)(2). There was some confusion over the language contained in those paragraphs at promulgation (partially due to an inconsistency between the promulgated preambles and the promulgated rules), and with the new language the EPA hopes to eliminate any such confusion. As §§ 63.488(a)(2) and 63.1323(a)(2) should make clear, a primary condenser can be a condenser operating as a reflux condenser on either a reactor or distillation column, or can be a condenser operating on a stripper or distillation operation to recover monomer, reaction products, by-products, or solvent.

G. References to Test Methods for the Polymers and Resins I Rule

This direct final rule is also adding references to the Test Methods for the Polymers and Resins I Rule, which were finalized on March 17, 1997 (62 FR 12546), and are contained in Appendix A of part 63. The newly added references to those Test Methods are contained in §§ 63.495(b)(3) and (e) and 63.505(e)(1)(ii).

H. Cross-Reference and Grammatical Corrections in Emissions Averaging Provisions

This direct final rule is making cross-reference and grammatical corrections (e.g., changing ''can'' to ''may,'' where appropriate) throughout §§ 63.503 and 63.1332. No substantive changes have been made to either of those two sections.

I. Removal of Reference to Obsolete HON Table

In §§ 63.506(e)(4)(ii)(H)(*1*) and 63.1335(e)(4)(ii)(L)(*1*), a reference to Table 14b of subpart G has been removed, because that table was removed in the promulgated amendments to the HON.

J. Clarification to Group 1 Storage Vessel Requirements in Subpart JJJ

A new paragraph is being introduced with this direct final rule (§ 63.1314(b)(3)), in order to clarify that, for all storage vessels that are not described in § 63.1314(b)(1) or (2), the owner or operator must control emissions to the level specified in § 63.119.

K. Process Vent Provisions for Affected Sources Producing Acrylonitrile Styrene Acrylate Resin/Alpha Methyl Styrene Acrylonitrile Resin (ASA/AMSAN)

This direct final rule includes a new paragraph at § 63.1315(e), which states the special control level for process vents at affected sources that produce acrylonitrile styrene acrylate resin (ASA) or alpha methyl styrene acrylonitrile resin (AMSAN). In addition, a reference to the new provisions in § 63.1315(e) has been added in § 63.1321, as § 63.1321(d).

L. Exemptions from Wastewater Provisions in Subpart JJJ

This direct final rule adds two paragraphs to § 63.1330, both of which act as exemptions from certain wastewater provisions in that section. The new paragraphs are § 63.1330(d) and (e), and pertain to affected sources producing ASA/AMSAN and affected sources producing polystyrene using a continuous or batch process.

M. Amendments to Tables 3 and 5 of Subpart JJJ

This direct final rule makes corrections and clarifications to both Tables 3 and 5. In the amended Table 5, the entry for Group 1 storage vessels associated with the production of styrene acrylonitrile resin (SAN) was clarified and footnote ''d'' was added. Because there are different control levels for different sets of storage vessels, the promulgated table appeared to present overlapping capacity and vapor pressure criteria, which was not the EPA's intent.

III. Impacts

The changes contained in this direct final rule are corrections and clarifications of the EPA's intent at the promulgation of subparts U and JJJ, and will not affect the estimated emissions reduction or the control cost for these rules. These clarifications and corrections should make it easier for owners and operators of affected sources, and for local and State authorities, to understand and implement the requirements found in subparts U and JJJ.

IV. 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 will serve as the

record in the case of judicial review. (See section 307(d)(7)(A) of the Act.)

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must submit to the Office of Management and Budget (OMB) for review significant regulatory actions. The Executive Order defines ''significant regulatory action'' as one that OMB determines is likely to result in a rule that may:

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

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

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

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

It has been determined that this Direct Final Rule does not qualify as a ''significant regulatory action'' under the terms of Executive Order 12866 and, therefore, is not subject to review by the Office of Management and Budget.

C. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, the 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 direct final rule does not create a mandate on State, local, or tribal governments. This direct final 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 direct final rule.

D. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, the 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 the 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.''

This direct final rule does not impose any duties or compliance costs on Indian tribal governments. Further, the direct final rule provided herein does not significantly alter the control standards imposed by subpart U or subpart JJJ for any source, including any that may affect communities of the Indian tribal governments. Hence, today's direct final 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 direct final rule.

E. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

The EPA has determined that this direct final rule does not include a Federal mandate that may result in estimated costs of, in the aggregate, $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector, and that this direct final rule does not significantly or uniquely impact small governments, because it contains no requirements that apply to such governments or impose obligations upon them. The EPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. In addition, because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments. Therefore, the requirements of the Unfunded Mandates Act do not apply to this direct final rule.

F. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small business, small not-for-profit enterprises, and small governmental jurisdictions. This direct final rule would not have a significant impact on a substantial number of small entities, because it clarifies and makes corrections to the promulgated versions of the Group I and IV Polymers and Resins NESHAP, but imposes no additional regulatory requirements on owners or operators of affected sources.

G. Paperwork Reduction Act

For both the Group I and Group IV Polymers and Resins NESHAP, the information collection requirements (ICRs) were submitted to the OMB under the *Paperwork Reduction Act.* At promulgation, OMB had already approved the ICRs for the Group IV Polymers and Resins NESHAP and assigned those standards the OMB control number 2060–0351. Subsequently, the OMB approved the ICRs for the Group I Polymers and Resins NESHAP, and on July 15, 1997 (62 FR 37720) the OMB control number

2060–0356 was assigned to the Group I Polymers and Resins NESHAP. 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 EPA has amended 40 CFR part 9, § 9.1, to indicate the ICRs contained in the Group I and IV Polymers and Resins NESHAP.

The amendments to the NESHAP contained in this direct final rule should have no impact on the information collection burden estimates made previously. Therefore, the ICRs have not been revised.

H. Applicability of Executive Order 13045

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 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.

The EPA interprets Executive Order 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. This direct final rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

I. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this direct final 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 this direct final rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This direct final rule is not a ''major rule'' as defined by 5 U.S.C. § 804(2).

J. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) directs all Federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling and analytical procedures, business practices, etc.) that are developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA requires Federal agencies like EPA to provide Congress, through OMB, with explanations when an agency decides not to use available and applicable voluntary consensus standards.

This action does not involve the proposal of any new technical standards. The EPA welcomes comments on this aspect of the Direct Final Rule and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

As part of a larger effort, the EPA is undertaking a project to cross-reference existing voluntary consensus standards on testing, sampling, and analysis with current and future EPA test methods. When completed, this project will assist the EPA in identifying potentially-applicable voluntary consensus standards which can then be evaluated for equivalency and applicability in determining compliance with future regulations.

List of Subjects

40 CFR Part 60

Environmental protection, Air pollution control, Volatile organic compounds.

40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances.

Dated: February 10, 1999.

Carol M. Browner,

Administrator.

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

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7413, 7414, 7416, 7429, 7601, and 7602.

Subpart DDD—Standards of Performance for Volatile Organic Compound (VOC) Emissions From the Polymer Manufacturing Industry

* * * * *

2. Amend § 60.564 by revising paragraph (h) introductory text to read as follows:

§ 60.564 Test Methods and procedures.

* * * * *

(h) The owner or operator shall determine compliance with the mass emission per mass product standards in §§ 60.560(d) and (e) and in §§ 60.562–1(b)(1)(i), (c)(1)(i)(A), (c)(1)(ii)(A), (c)(2)(i), and (c)(2)(ii)(A).

The emission rate of TOC shall be computed using the following equation:

$$ER_{TOC} = \frac{E_{TOC}}{P_p * Mg/1000kg}$$

Where:

ER_{TOC} = Emission rate of total organic compounds (minus methane and ethane), kg TOC/Mg product.

E_{TOC} = Emission rate of total organic compounds (minus methane and ethane) in the sample, kg/hr.

P_p = The rate of polymer produced, kg/hr.

Mg/1000 kg = Mg of polymer produced per kg of polymer produced.

* * * * *

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

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

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

Subpart U—National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins

4. Amend § 63.481 by revising paragraphs (d)(1)(ii), and (d)(1)(iii); and by adding paragraph (d)(1)(iv), to read as follows:

§ 63.481 Compliance schedule and relationship to existing applicable rules.

* * * * *

(d) * * *

(1) * * *

(ii) A barrier fluid system will be installed;

(iii) A new barrier fluid will be utilized which requires changes to the existing barrier fluid system; or

(iv) The compressor will be modified to permit connecting the compressor to a fuel gas system or closed vent system, or be modified so that emissions from the compressor can be routed to a process.

* * * * *

5. Amend § 63.482 by adding, in alphabetical order, definitions for ''combustion device burner'' and ''supplemental combustion air,'' to paragraph (b), to read as follows:

§ 63.482 Definitions.

* * * * *

(b) * * *

Combustion device burner means a device designed to mix and ignite fuel and air to provide a flame to heat and oxidize waste organic vapors in a combustion device.

* * * * *

Supplemental combustion air means the air that is added to a vent stream after the vent stream leaves the unit operation. Air that is part of the vent stream as a result of the nature of the unit operation is not considered supplemental combustion air. Air required to operate combustion device burner(s) is not considered supplemental combustion air.

* * * * *

6. Amend § 63.485 by revising paragraph (a); by adding and reserving paragraphs (t) and (u); and by adding paragraph (v), to read as follows:

§ 63.485 Continuous front-end process vent provisions.

(a) For each continuous front-end process vent located at an affected source, the owner or operator shall comply with the requirements of §§ 63.113 through 63.118, except as provided for in paragraphs (b) through (v) of this section. The owner or operator of continuous front-end process vents that are combined with one or more batch front-end process vents shall comply with paragraph (o) or (p) of this section.

* * * * *

(v) When a combustion device is used to comply with the 20 parts per million by volume outlet concentration standard specified in § 63.113(a)(2), the correction to 3 percent oxygen is only required when supplemental combustion air is used to combust the emissions, for the purposes of this subpart. In addition, the correction to 3 percent oxygen specified in § 63.116(c)(3) and (c)(3)(iii) is only required when supplemental combustion air is used to combust the emissions, for the purposes of this subpart. Finally, when a combustion device is used to comply with the 20 parts per million by volume outlet concentration standard specified in § 63.113(a)(2), an owner or operator shall record and report the outlet concentration required in § 63.117(a)(4)(ii) and (a)(4)(iv) corrected to 3 percent oxygen when supplemental combustion air is used to combust the emissions, for the purposes of this subpart. When supplemental combustion air is not used to combust the emissions, an owner or operator may record and report the outlet concentration required in § 63.117(a)(4)(ii) and (a)(4)(iv) on an uncorrected basis or corrected to 3 percent oxygen, for the purposes of this subpart.

7. Amend § 63.487 by revising paragraph (b)(2), to read as follows:

§ 63.487 Batch front-end process vents—reference control technology.

* * * * *

(b) * * *

(2) For each aggregate batch vent stream, reduce organic HAP emissions by 90 weight percent or to a concentration of 20 parts per million by volume, whichever is less stringent, on a continuous basis using a control device. For purposes of complying with the 20 parts per million by volume outlet concentration standard, the outlet concentration shall be calculated on a dry basis. When a combustion device is used for purposes of complying with the 20 parts per million by volume outlet concentration standard, the concentration shall be corrected to 3 percent oxygen if supplemental combustion air is used to combust the emissions. If supplemental combustion air is not used, a correction to 3 percent oxygen is not required.

* * * * *

8. Amend § 63.488 by revising paragraph (a)(2), to read as follows:

§ 63.488 Methods and procedures for batch front-end process vent group determination.

(a) * * *

(2) The annual uncontrolled organic HAP or TOC emissions and annual average batch vent flow rate shall be determined at the exit from the batch unit operation. For the purposes of these determinations, the primary condenser operating as a reflux condenser on a reactor or distillation column, the primary condenser recovering monomer, reaction products, by-products, or solvent from a stripper operated in batch mode, and the primary condenser recovering monomer, reaction products, by-products, or solvent from a distillation operation operated in batch mode shall be considered part of the batch unit operation. All other devices that recover or oxidize organic HAP or TOC vapors shall be considered control devices as defined in § 63.482.

* * * * *

9. Amend § 63.490 by revising paragraph (e) introductory text and by adding paragraph (e)(3), to read as follows:

§ 63.490 Batch front-end process vents—performance test methods and procedures to determine compliance.

* * * * *

(e) *Aggregate batch vent stream testing for compliance with § 63.487(b)(2).* Except as specified in paragraphs (e)(1) through (e)(3) of this section, owners or operators of aggregate batch vent streams complying with § 63.487(b)(2) shall conduct a performance test using the performance testing procedures for continuous front-end process vents in § 63.116(c).

* * * * *

(3) When a combustion device is used to comply with the 20 parts per million by volume outlet concentration standard specified in § 63.487(b)(2), the correction to 3 percent oxygen specified in the performance testing procedures of § 63.116(c)(3) and (c)(3)(iii) is only required when supplemental combustion air is used to combust the emissions, for the purposes of this subpart.

* * * * *

10. Amend § 63.491 by revising paragraph (b)(4) introductory text and adding paragraph (b)(5), to read as follows:

§ 63.491 Batch front-end process vents—recordkeeping requirements.

* * * * *

(b) * * *

(4) The following information when using a control device to meet the

percent reduction requirement specified in § 63.487 (a)(2) or (b)(2):

* * * * *

(5) When complying with the 20 parts per million by volume outlet concentration standard specified in § 63.487(b)(2), records of the outlet concentration of organic HAP or TOC on a dry basis. If supplemental combustion air is used to combust the emissions, the outlet concentration shall be corrected to 3 percent oxygen. If supplemental combustion air is not used, a correction to 3 percent oxygen is not required.

* * * * *

11. Amend § 63.495 by revising paragraph (b)(3) and adding paragraph (e) to read as follows:

§ 63.495 Back-end process provisions—procedures to determine compliance using stripping technology.

* * * * *

(b) * * *

(3) The residual organic HAP content in each sample is to be determined using the Methods specified in paragraph (e) of this section.

* * * * *

(e) The residual organic HAP content in each sample is to be determined using the methods specified in paragraphs (e)(1) through (e)(5) of this section, as applicable.

(1) For styrene butadiene rubber produced by the emulsion process, either Method 312a, 312b, or 312c of 40 CFR part 63, appendix A, shall be used.

(2) For styrene butadiene rubber produced by the solution process, either Method 313a or 313b of 40 CFR part 63, appendix A, shall be used.

(3) For polybutadiene rubber produced by the solution process, either Method 313a or 313b of 40 CFR part 63, appendix A, shall be used.

(4) For ethylene-propylene rubber produced by the solution process, either Method 310a, 310b, or 310c of 40 CFR part 63, appendix A, shall be used.

(5) Alternatively, any other method that has been validated according to the applicable procedures in Method 301 of 40 CFR part 63, appendix A, may be used.

* * * * *

12. Amend § 63.503 by revising paragraphs (a) introductory text, (a)(2), (a)(3), (c) introductory text, (c)(2), (c)(5)(i), (c)(5)(ii), (d)(5), (e)(3)(ii), (e)(5), (g)(1), (g)(2)(ii)(A), (g)(2)(iii)(B)(1), (g)(2)(iii)(B)(*2*), (g)(3), (g)(5), (g)(7)(ii)(A), (h)(1) introductory text, (h)(3), (h)(5), (h)(6)(ii) introductory text (the Equation remains unchanged), (h)(7)(ii) introductory text, (i) introductory text, (i)(1) introductory text, (i)(1)(iii), (i)(2), (i)(3), (i)(5) introductory text, (i)(5)(i), (j)(2) introductory text, (j)(2)(ii)(B), (j)(2)(ii)(D), (j)(2)(ii)(E), (j)(2)(iv), (j)(2)(v), (k) introductory text, (k)(4) introductory text, (m)(1)(i), (m)(1)(ii), (m)(1)(iii), (m)(2)(i), (m)(2)(ii), (m)(3)(i), (m)(3)(ii), (m)(3)(iii), (m)(4)(ii), (m)(5)(i), (m)(5)(ii), (m)(5)(iii), and (m)(5)(iv), to read as follows:

§ 63.503 Emissions averaging provisions.

(a) This section applies to owners or operators of existing affected sources who seek to comply with § 63.483(b) by using emissions averaging rather than following the provisions of §§ 63.484, 63.485, 63.486, 63.494, and 63.501.

* * * * *

(2) Compliance with the provisions of this section may be based on either organic HAP or TOC.

(3) For the purposes of the provisions in this section, whenever Method 18, 40 CFR part 60, appendix A, is specified within the paragraphs of this section or is specified by reference through provisions outside this section, Method 18 or Method 25A, 40 CFR part 60, appendix A, may be used. The use of Method 25A, 40 CFR part 60, appendix A, shall conform with the requirements in paragraphs (a)(3)(i) and (a)(3)(ii) of this section.

(i) The organic HAP used as the calibration gas for Method 25A, 40 CFR part 60, appendix A, shall be the single organic HAP representing the largest percent by volume of the emissions.

(ii) The use of Method 25A, 40 CFR part 60, appendix A, is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

* * * * *

(c) Paragraphs (c)(1) through (c)(4) of this section describe the emission points that may be used to generate emissions averaging credits if control was applied after November 15, 1990 and if sufficient information is available to determine the appropriate value of credits for the emission point. Paragraph (c)(5) of this section discusses the use of pollution prevention in generating emissions averaging credits.

* * * * *

(2) Storage vessels, continuous front-end process vents, and process wastewater steams that are determined to be Group 1 emission points and that are controlled by a technology that the Administrator or permitting authority agrees has a higher nominal efficiency than the reference control technology. Information on the nominal efficiencies for such technologies shall be submitted and approved as provided in paragraph (i) of this section.

* * * * *

(5) * * *

(i) For a Group 1 storage vessel, batch front-end process vent, aggregate batch vent stream, continuous front-end process vent, or process wastewater stream, the pollution prevention measure shall reduce emissions more than if the reference control technology or standard had been applied to the emission point instead of the pollution prevention measure, except as provided in paragraph (c)(5)(ii) of this section.

(ii) If a pollution prevention measure is used in conjunction with other controls for a Group 1 storage vessel, batch front-end process vent, aggregate batch vent stream, continuous front-end process vent, or process wastewater stream, the pollution prevention measure alone does not have to reduce emissions more than the reference control technology or standard, but the combination of the pollution prevention measure and other controls shall reduce emissions more than if the applicable reference control technology or standard had been applied instead of the pollution prevention measure.

(d) * * *

(5) Emission points controlled to comply with a State or Federal rule other than this subpart cannot be used to generate credits, unless the level of control has been increased after November 15, 1990 to a level above what is required by the other State or Federal rule. Only the control above what is required by the other State or Federal rule will be credited. However, if an emission point has been used to generate emissions averaging credit in an approved emissions average, and the emission point is subsequently made subject to a State or Federal rule other than this subpart, the emission point may continue to generate emissions averaging credit for the purpose of complying with the previously approved emissions average.

(e) * * *

(3) * * *

(ii) The initial demonstration in the Emissions Averaging Plan or operating permit application that credit-generating emission points will be capable of generating sufficient credits to offset the debits from the debit-generating emission points shall be made under representative operating conditions. After the compliance date, actual operating data will be used for all debit and credit calculations.

* * * * *

(5) Record and report quarterly and annual credits and debits in the Periodic

Reports as specified in § 63.506(e)(6). Every fourth Periodic Report shall include a certification of compliance with the emissions averaging provisions as required by § 63.506(e)(6)(x)(C)(*2*).

* * * * *

(g) * * *

(1) Source-wide debits shall be calculated using Equation 33. Debits and all terms of the equation are in units of megagrams per month (Mg/month):

$$\text{Debits} = \sum_{i=1}^{n}\left(\text{ECFEPV}_{\text{iACTUAL}} - (0.02)\ \text{ECFEPV}_{\text{iu}}\right) + \sum_{i=1}^{n}\left(\text{ES}_{\text{iACTUAL}} - (0.05)\ \text{ES}_{\text{iu}}\right)$$
$$+ \left(\text{EBEP}_{\text{ACTUAL}} - \text{EBEP}_{\text{c}}\right) + \sum_{i=1}^{n}\left(\text{EWW}_{\text{iACTUAL}} - \text{EWW}_{\text{ic}}\right)$$
$$+ \sum_{i=1}^{n}\left(\text{EBFEPV}_{\text{iACTUAL}} - (0.1)\ \text{EBFEPV}_{\text{iu}}\right) + \sum_{i=1}^{n}\left(\text{EABV}_{\text{iACTUAL}} - (0.1)\ \text{EABV}_{\text{iu}}\right) \qquad \text{[Eq. 33]}$$

Where:

$ECFEPV_{iACTUAL}$ = Emissions from each Group 1 continuous front-end process vent i that is uncontrolled or is controlled to a level less stringent than the applicable reference control technology. $ECFEPV_{iACTUAL}$ is calculated according to paragraph (g)(2)(iii) of this section.

$(0.02)ECFEPV_{iu}$ = Emissions from each Group 1 continuous front-end process vent i if the applicable reference control technology had been applied to the uncontrolled emissions. $ECFEPV_{iu}$ is calculated according to paragraph (g)(2)(ii) of this section.

$ES_{iACTUAL}$ = Emissions from each Group 1 storage vessel i that is uncontrolled or is controlled to a level less stringent than the applicable reference control technology or standard. $ES_{iACTUAL}$ is calculated according to paragraph (g)(3) of this section.

$(0.05)ES_{iu}$ = Emissions from each Group 1 storage vessel i if the applicable reference control technology or standard had been applied to the uncontrolled emissions. ES_{iu} is calculated according to paragraph (g)(3) of this section.

$EBEP_{ACTUAL}$ = Emissions from back-end process operations that do not meet the residual organic HAP limits in § 63.494. $EBEP_{ACTUAL}$ is calculated according to paragraph (g)(4)(i) of this section.

$EBEP_c$ = Emissions from back-end process operations if the residual organic HAP limits in § 63.494(a) were met. $EBEP_c$ is calculated according to paragraph (g)(4)(ii) of this section.

$EWW_{iACTUAL}$ = Emissions from each Group 1 wastewater stream i that is uncontrolled or is controlled to a level less stringent than the applicable reference control technology. $EWW_{iACTUAL}$ is calculated according to paragraph (g)(5) of this section.

EWW_{ic} = Emissions from each Group 1 wastewater stream i if the reference control technology had been applied to the uncontrolled emissions. EWW_{ic} is calculated according to paragraph (g)(5) of this section.

$EBFEPV_{iACTUAL}$ = Emissions from each Group 1 batch front-end process vent stream i that is uncontrolled or is controlled to a level less stringent than the applicable standard. $EBFEPV_{iACTUAL}$ is calculated according to paragraph (g)(6)(ii) of this section.

$(0.1)\ EBFEPV_{iu}$ = Emissions from each Group 1 batch front-end process vent i if the applicable standard had been applied to the uncontrolled emissions. $EBFEPV_{iu}$ is calculated according to paragraph (g)(6)(i) of this section.

$EABV_{iACTUAL}$ = Emissions from each Group 1 aggregate batch vent stream i that is uncontrolled or is controlled to a level less stringent than the applicable standard. $EABV_{iACTUAL}$ is calculated according to paragraph (g)(7)(iii) of this section.

$(0.1)\ EABV_{iu}$ = Emissions from each Group 1 aggregate batch vent stream i if the applicable standard had been applied to the uncontrolled emissions. $EABV_{iu}$ is calculated according to paragraph (g)(7)(ii) of this section.

n = The number of emission points being included in the emissions average.

(2) * * *

(ii) * * *

(A) The values of Q and C_j shall be determined during a performance test conducted under representative operating conditions. The values of Q and C_j shall be established in the Notification of Compliance Status and shall be updated as provided in paragraph (g)(2)(ii)(B) of this section.

* * * * *

(iii) * * *

* * * * *

(B) * * *

(*1*) The percent reduction shall be measured according to the procedures in § 63.116 if a combustion control device is used. For a flare meeting the criteria in § 63.116(a), or a boiler or process heater meeting the criteria in § 63.116(b), the percent reduction shall be 98 percent. If a noncombustion control device is used, percent reduction shall be demonstrated by a performance test at the inlet and outlet of the device, or, if testing is not feasible, by a control design evaluation and documented engineering calculations.

(*2*) For determining debits from Group 1 continuous front-end process vents, product recovery devices shall not be considered control devices and cannot be assigned a percent reduction in calculating $ECFEPV_{iACTUAL}$. The sampling site for measurement of uncontrolled emissions is after the final product recovery device. However, as provided in § 63.113(a)(3), a Group 1 continuous front-end process vent may add sufficient product recovery to raise the TRE index value above 1.0, thereby becoming a Group 2 continuous front-end process vent. Such a continuous front-end process vent would not be a Group 1 continuous front-end process vent and would, therefore, not be included in determining debits under this paragraph.

* * * * *

(3) Emissions from storage vessels shall be calculated using the procedures specified in § 63.150(g)(3).

* * * * *

(5) Emissions from wastewater shall be calculated using the procedures specified in § 63.150(g)(5).

* * * * *

(7) * * *

(ii) * * *

(A) The values of Q and C_j shall be determined during a performance test conducted under representative operating conditions. The values of Q and C_j shall be established in the Notification of Compliance Status and shall be updated as provided in paragraph (g)(7)(ii)(B) of this section.

* * * * *

(h) * * *

(1) Source-wide credits shall be calculated using Equation 41. Credits and all terms of the equation are in units of Mg/month, and the baseline date is November 15, 1990:

$$\text{Credits} = D\sum_{i=1}^{n}\left((0.02)\ ECFEPV1_{iu} - ECFEPV1_{iACTUAL}\right) + D\sum_{i=1}^{m}\left(ECFEPV2_{iBASE} - ECFEPV2_{iACTUAL}\right)$$
$$+ D\sum_{i=1}^{n}\left((0.05)\ ES1_{iu} - ES1_{iACTUAL}\right) + D\sum_{i=1}^{m}\left(ES2_{iBASE} - ES2_{iACTUAL}\right) + D\left(EBEP_{c} - EBEP_{ACTUAL}\right)$$
$$+ D\sum_{i=1}^{n}\left(EWW1_{ic} - EWW1_{iACTUAL}\right) + D\sum_{i=1}^{m}\left(EWW2_{iBASE} - EWW2_{iACTUAL}\right)$$
$$+ D\sum_{i=1}^{n}\left((0.1)\ EBFEPV1_{iu} - EBFEPV1_{iACTUAL}\right) + D\sum_{i=1}^{n}\left((0.1)\ EABV1_{iu} - EABV1_{iACTUAL}\right)$$
$$+ D\sum_{i=1}^{m}\left(EBFEPV2_{iBASE} - EBFEPV2_{iACTUAL}\right) + D\sum_{i=1}^{m}\left(EABV2_{iBASE} - EABV2_{iACTUAL}\right) \qquad \text{[Eq. 41]}$$

Where:

D = Discount factor = 0.9 for all credit generating emission points, except those controlled by a pollution prevention measure; discount factor = 1.0 for each credit generating emission point controlled by a pollution prevention measure (i.e., no discount provided).

$ECFEPV1_{iACTUAL}$ = Emissions for each Group 1 continuous front-end process vent i that is controlled to a level more stringent than the reference control technology. $ECFEPV1_{iACTUAL}$ is calculated according to paragraph (h)(2)(ii) of this section.

$(0.02)ECFEPV1_{iu}$ = Emissions from each Group 1 continuous front-end process vent i if the reference control technology had been applied to the uncontrolled emissions. $ECFEPV1_{iu}$ is calculated according to paragraph (h)(2)(i) of this section.

$ECFEPV2_{iACTUAL}$ = Emissions from each Group 2 continuous front-end process vent i that is controlled. $ECFEPV2_{iACTUAL}$ is calculated according to paragraph (h)(2)(iii) of this section.

$ECFEPV2_{iBASE}$ = Emissions from each Group 2 continuous front-end process vent i at the baseline date. $ECFEPV1_{iBASE}$ is calculated in paragraph (h)(2)(iv) of this section.

$ES1_{iACTUAL}$ = Emissions from each Group 1 storage vessel i that is controlled to a level more stringent than the reference control technology or standard. $ES1_{iACTUAL}$ is calculated according to paragraph (h)(3) of this section.

$(0.05)\ ES1_{iu}$ = Emissions from each Group 1 storage vessel i if the reference control technology had been applied to the uncontrolled emissions. $ES1_{iu}$ is calculated according to paragraph (h)(3) of this section.

$ES2_{iACTUAL}$ = Emissions from each Group 2 storage vessel i that is controlled. $ES2_{iACTUAL}$ is calculated according to paragraph (h)(3) of this section.

$ES2_{iBASE}$ = Emissions from each Group 2 storage vessel i at the baseline date. $ES2_{iBASE}$ is calculated in paragraph (h)(3) of this section.

$EBEP_{ACTUAL}$ = Actual emissions from back-end process operations, Mg/month. $EBEP_{ACTUAL}$ is calculated in paragraph (h)(4)(i) of this section.

$EBEP_{c}$ = Emissions from back-end process operations if the residual organic HAP limits in § 63.494(a) were met, Mg/month. $EBEP_{c}$ is calculated in paragraph (h)(4)(ii) of this section.

$EWW1_{iACTUAL}$ = Emissions from each Group 1 wastewater stream i that is controlled to a level more stringent than the reference control technology. $EWW1_{iACTUAL}$ is calculated according to paragraph (h)(5) of this section.

$EWW1_{ic}$ = Emissions from each Group 1 wastewater stream i if the reference control technology had been applied to the uncontrolled emissions. $EWW1_{ic}$ is calculated according to paragraph (h)(5) of this section.

$EWW2_{iACTUAL}$ = Emissions from each Group 2 wastewater stream i that is controlled. $EWW2_{iACTUAL}$ is calculated according to paragraph (h)(5) of this section.

$EWW2_{iBASE}$ = Emissions from each Group 2 wastewater stream i at the baseline date. $EWW2_{iBASE}$ is calculated according to paragraph (h)(5) of this section.

$(0.1)\ EBFEPV1_{iu}$ = Emissions from each Group 1 batch front-end process vent i if the applicable standard had been applied to the uncontrolled emissions. $EBFEPV_{iu}$ is calculated according to paragraph (h)(6)(i) of this section.

$EBFEPV1_{iACTUAL}$ = Emissions from each Group 1 batch front-end process vent i that is controlled to a level more stringent than the applicable standard. $EBFEPV1_{iACTUAL}$ is calculated according to paragraph (h)(6)(ii) of this section.

$(0.1)EABV1_{iu}$ = Emissions from each Group 1 aggregate batch vent stream i if the applicable standard had been applied to the uncontrolled emissions. $EABV1_{iu}$ is calculated according to paragraph (h)(7)(i) of this section.

$EABV1_{iACTUAL}$ = Emissions from each Group 1 aggregate batch vent stream i that is controlled to a level more stringent than the applicable standard. $EABV1_{iACTUAL}$ is calculated according to paragraph (h)(7)(ii) of this section.

$EBFEPV2_{iBASE}$ = Emissions from each Group 2 batch front-end process vent i at the baseline date.

$EBFEPV2_{iBASE}$ is calculated according to paragraph (h)(6)(iv) of this section.

$EBFEPV2_{iACTUAL}$ = Emissions from each Group 2 batch front-end process vent i that is controlled. $EBFEPV2_{iACTUAL}$ is calculated according to paragraph (h)(6)(iii) of this section.

$EABV2_{iBASE}$ = Emissions from each Group 2 aggregate batch vent stream i at the baseline date. $EABV2_{iBASE}$ is calculated according to paragraph (g)(7)(iv) of this section.

$EABV2_{iACTUAL}$ = Emissions from each Group 2 aggregate batch vent stream i that is controlled. $EABV2_{iACTUAL}$ is calculated according to paragraph (h)(7)(iii) of this section.

n = Number of Group 1 emission points included in the emissions average. The value of n is not necessarily the same for continuous front-end process vents, batch front-end process vents, aggregate batch vent streams, storage vessels, wastewater streams, or the collection of process sections within the affected source.

m = Number of Group 2 emission points included in the emissions average. The value of m is not necessarily the same for continuous front-end process vents, batch front-end process vents, aggregate batch vent streams, storage vessels, wastewater streams, or the collection of process sections within the affected source.

* * * * *

(3) Emissions from storage vessels shall be calculated using the procedures specified in § 63.150(h)(3).

* * * * *

(5) Emissions from wastewater streams shall be calculated using the procedures specified in § 63.150(h)(5).

(6) * * *

(ii) Actual emissions from Group 1 batch front-end process vents controlled to a level more stringent than the standard ($EBFEPV1_{iACTUAL}$) shall be calculated using Equation 46, where percent reduction is for the batch cycle: [Equation 46 is unchanged.]

* * * * *

(7) * * *

(ii) Actual emissions from Group 1 aggregate batch vent streams controlled

to a level more stringent than the standard ($EABV1i_{ACTUAL}$) shall be calculated using Equation 49:

$$EABV1_{iACTUAL} = EABV1_{iu}\left(1 - \frac{\text{Percent reduction}}{100\%}\right) \quad \text{[Eq. 49]}$$

* * * * *

(i) The following procedures shall be followed to establish nominal efficiencies for emission controls for storage vessels, continuous front-end process vents, and process wastewater streams. The procedures in paragraphs (i)(1) through (i)(6) of this section shall be followed for control technologies that are different in use or design from the reference control technologies and achieve greater percent reductions than the percent efficiencies assigned to the reference control technologies in § 63.111.

(1) In those cases where the owner or operator is seeking permission to take credit for use of a control technology that is different in use or design from the reference control technology, and the different control technology will be used in more than three applications at a single plant-site, the owner or operator shall submit the information specified in paragraphs (i)(1)(i) through (i)(1)(iv) of this section, as specified in § 63.1335(e)(7)(ii), to the Director of the EPA Office of Air Quality Planning and Standards, in writing.

* * * * *

(iii) Documentation demonstrating to the Administrator's satisfaction the control efficiency of the control technology. This may include performance test data collected using an appropriate EPA Method or any other method validated according to Method 301, 40 CFR part 63, appendix A. If it is infeasible to obtain test data, documentation may include a design evaluation and calculations. The engineering basis of the calculation procedures and all inputs and assumptions made in the calculations shall be documented.

* * * * *

(2) The Administrator shall determine within 120 days whether an application presents sufficient information to determine nominal efficiency. The Administrator reserves the right to request specific data in addition to the items listed in paragraph (i)(1) of this section.

(3) The Administrator shall determine within 120 days of the submittal of sufficient data whether a control technology shall have a nominal efficiency and the level of that nominal efficiency. If, in the Administrator's judgment, the control technology achieves a level of emission reduction greater than the reference control technology for a particular kind of emission point, the Administrator will publish a **Federal Register** notice establishing a nominal efficiency for the control technology.

* * * * *

(5) In those cases where the owner or operator is seeking permission to take credit for use of a control technology that is different in use or design from the reference control technology and the different control technology will be used in no more than three applications at a single plant site, the owner or operator shall submit the information listed in paragraph (i)(1)(i) as specified in § 63.506(e)(7)(ii) to the Administrator.

(i) In these instances, use and conditions for use of the control technology may be approved by the permitting authority as part of an operating permit application or modification. The permitting authority shall follow the procedures specified in paragraphs (i)(2) through (i)(4) of this section except that, in these instances, a **Federal Register** notice is not required to establish the nominal efficiency for the different technology.

* * * * *

(j) * * *

(2) The emission reduction efficiency of pollution prevention measures implemented after November 15, 1990, may be used in calculating the actual emissions from an emission point in the debit and credit equations in paragraphs (g) and (h) of this section.

* * * * *

(ii) * * *

(B) For wastewater, E_B shall be calculated according to § 63.150(j)(2)(ii)(B).

* * * * *

(D) The monthly emissions after the pollution prevention measure, E_{pp}, may be determined during a performance test or by a design evaluation and documented engineering calculations. Once an emissions-to-production ratio has been established, the ratio may be used to estimate monthly emissions from monthly production records.

(E) For wastewater, E_{pp} shall be calculated according to § 63.150(j)(2)(ii)(E).

* * * * *

(iv) The same pollution prevention measure may reduce emissions from multiple emission points. In such cases, the percent reduction in emissions for each emission point shall be calculated.

(v) For the purposes of the equations in paragraphs (h)(2) through (h)(7) of this section, used to calculate credits for emission points controlled more stringently than the reference control technology or standard, the nominal efficiency of a pollution prevention measure is equivalent to the percent reduction of the pollution prevention measure. When a pollution prevention measure is used, the owner or operator of an affected source is not required to apply to the Administrator for a nominal efficiency and is not subject to paragraph (i) of this section.

(k) The owner or operator shall demonstrate that the emissions from the emission points proposed to be included in the emissions average will not result in greater hazard, or at the option of the Administrator, greater risk to human health or the environment than if the emission points were controlled according to the provisions in §§ 63.484, 63.485, 63.486, 63.493, and 63.501.

* * * * *

(4) A hazard or risk equivalency demonstration shall:

* * * * *

(m) * * *

(1) * * *

(i) Determine whether the continuous front-end process vent is Group 1 or Group 2 according to the procedures specified in § 63.115 and as required by § 63.485;

(ii) Conduct initial performance tests to determine percent reduction as specified in § 63.116 and as required by § 63.485; and

(iii) Monitor the operating parameters, keep records, and submit reports as specified in §§ 63.114, 63.117(a), and 63.118(a) and (f), as required, for the specific control device as required by § 63.485.

(2) * * *

(i) Determine the flow rate, organic HAP concentration, and TRE index

value according to the procedures specified in § 63.115; and

(ii) Monitor the operating parameters, keep records, and submit reports according to the procedures specified in §§ 63.114, 63.117(a), and 63.118(b) and (f), as required, for the specific recovery device, and as required by § 63.485.

(3) * * *

(i) Perform the monitoring or inspection procedures according to the procedures specified in § 63.120, and as required by § 63.484;

(ii) Perform the reporting and recordkeeping procedures according to the procedures specified in §§ 63.122 and 63.123, and as required by § 63.484; and

(iii) For closed vent systems with control devices, conduct an initial design evaluation and submit an operating plan according to the procedures specified in § 63.120(d) and (b), and as required by § 63.484.

(4) * * *

(ii) If a control or recovery device is used to reduce back-end process operation emissions, the owner or operator of the affected source shall comply with §§ 63.496, 63.497, 63.498(d), and the applicable provisions of 63.499, and shall implement the provisions of these sections.

(5) * * *

(i) For wastewater treatment processes, conduct tests according to the procedures specified in § 63.138(i) and (j), and as required by § 63.501;

(ii) Conduct inspections and monitoring according to the procedures specified in § 63.143, and as required by § 63.501;

(iii) Implement a recordkeeping program according to the procedures specified in § 63.147, and as required by § 63.501; and

(iv) Implement a reporting program according to the procedures specified in § 63.146, and as required by § 63.501.

* * * * *

13. Amend § 63.505 by revising paragraph (e)(1)(ii), to read as follows:

§ 63.505 Parameter monitoring levels and excursions.

* * * * *

(e) * * *

(1) * * *

(ii) The residual organic HAP content in each sample is to be determined using Methods specified in § 63.495(e).

* * * * *

14. Amend § 63.506 by revising paragraph (e)(4)(ii)(H)(*1*), to read as follows:

§ 63.506 General recordkeeping and reporting provisions.

* * * * *

(e) * * *

(4) * * *

(ii) * * *

(H) * * *

(*1*) The required documentation shall include the data used to determine whether the wastewater stream is a Group 1 or Group 2 wastewater stream.

* * * * *

Subpart JJJ—National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins

15. Amend § 63.1311 by revising paragraphs (d)(1)(ii), (d)(1)(iii), and (d)(4), and adding paragraph (d)(1)(iv), to read as follows:

§ 63.1311 Compliance schedule and relationship to existing applicable rules.

* * * * *

(d) * * *

(1) * * *

(ii) A barrier fluid system will be installed;

(iii) A new barrier fluid will be utilized which requires changes to the existing barrier fluid system; or

(iv) The compressor will be modified to permit connecting the compressor to a fuel gas system or a closed vent system or modified so that emissions from the compressor can be routed to a process.

* * * * *

(4) Compliance with the compressor provisions of § 63.164 shall occur not later than September 12, 1999 for any compressor meeting one or more of the criteria in paragraphs (d)(4)(i) through (d)(4)(iii) of this section. The owner or operator who elects to use these provisions shall submit a request for an extension of compliance in accordance with the requirements of paragraph (d)(2)(iv) of this section.

(i) Compliance cannot be achieved without replacing the compressor;

(ii) Compliance cannot be achieved without recasting the distance piece; or

(iii) Design modifications are required to connect to a closed-vent or recovery system.

* * * * *

16. Amend § 63.1312 by adding, in alphabetical order, definitions for ''combustion device burner'' and ''supplemental combustion air,'' to paragraph (b), to read as follows:

§ 63.1312 Definitions.

* * * * *

(b) * * *

Combustion device burner means a device designed to mix and ignite fuel and air to provide a flame to heat and oxidize waste organic vapors in a combustion device.

* * * * *

Supplemental combustion air means the air that is added to a vent stream after the vent stream leaves the unit operation. Air that is part of the vent stream as a result of the nature of the unit operation is not considered supplemental combustion air. Air required to operate combustion device burner(s) is not considered supplemental combustion air.

* * * * *

17. Amend § 63.1314 by adding paragraph (b)(3), to read as follows:

§ 63.1314 Storage vessel provisions.

* * * * *

(b) * * *

(3) For all other storage vessels designated as Group 1 storage vessels, emissions shall be controlled to the level designated in § 63.119.

* * * * *

18. Amend § 63.1315 by revising paragraph (a) introductory text; adding and reserving paragraphs (a)(16) and (a)(17); and adding paragraphs (a)(18) and (e), to read as follows:

§ 63.1315 Continuous process vents provisions.

(a) For each continuous process vent located at an affected source, the owner or operator shall comply with the requirements of §§ 63.113 through 63.118, with the differences noted in paragraphs (a)(1) through (a)(18) of this section for the purposes of this subpart, except as provided in paragraphs (b) through (e) of this section.

* * * * *

(16) [Reserved]

(17) [Reserved]

(18) When a combustion device is used to comply with the 20 parts per million by volume outlet concentration standard specified in § 63.113(a)(2), the correction to 3 percent oxygen is only required when supplemental combustion air is used to combust the emissions, for the purposes of this subpart. In addition, the correction to 3 percent oxygen specified in § 63.116(c)(3) and (c)(3)(iii) is only required when supplemental combustion air is used to combust the emissions, for the purposes of this subpart. Finally, when a combustion device is used to comply with the 20 parts per million by volume outlet concentration standard specified in § 63.113(a)(2), an owner or operator shall record and report the outlet concentration required in § 63.117(a)(4)(ii) and (a)(4)(iv) corrected to 3 percent oxygen when supplemental combustion air is used to combust the emissions, for the purposes of this subpart. When supplemental combustion air is not used to combust

the emissions, an owner or operator may record and report the outlet concentration required in § 63.117(a)(4)(ii) and (a)(4)(iv) on an uncorrected basis or corrected to 3 percent oxygen, for the purposes of this subpart.

* * * * *

(e) Owners or operators of affected sources producing ASA/AMSAN shall reduce organic HAP emissions from each continuous process vent, each batch process vent, and each aggregate batch vent stream by 98 weight-percent and shall comply with either paragraph (e)(1), (e)(2), or (e)(3), as appropriate. Where batch process vents or aggregate batch vent streams are combined with continuous process vents, the provisions of paragraph (a)(13) of this section shall apply for the purposes of this paragraph (e).

(1) For each continuous process vent, comply with paragraph (a) of this section as specified in paragraphs (e)(1)(i) through (e)(1)(ii) of this section.

(i) For purpose of this section, each continuous process vent shall be considered to be a Group 1 continuous process vent and the owner or operator of that continuous process vent shall comply with the requirements for a Group 1 continuous process vent.

(ii) For purposes of this section, the group determination procedure required by § 63.115 shall not apply.

(2) For each batch process vent, comply with §§ 63.1321 through 63.1327 as specified in paragraphs (e)(2)(i) through (e)(2)(ii) of this section.

(i) For purpose of this section, each batch process vent shall be considered to be a Group 1 batch process vent and the owner or operator of that batch process vent shall comply with the requirements for a Group 1 batch process vent contained in §§ 63.1321 through 63.1327, except that each batch process vent shall be controlled to reduce organic HAP emissions by 98 weight-percent.

(ii) For purposes of this section, the group determination procedure required by § 63.1323 shall not apply.

(3) For each aggregate batch vent stream, comply with §§ 63.1321 through 63.1327 as specified in paragraphs (e)(3)(i) through (e)(3)(ii) of this section.

(i) For purpose of this section, each aggregate batch vent stream shall be considered to be a Group 1 aggregate batch vent stream and the owner or operator of that aggregate batch vent stream shall comply with the requirements for a Group 1 aggregate batch vent stream contained in §§ 63.1321 through 63.1327, except that each aggregate batch vent stream shall be controlled to reduce organic HAP emissions by 98 weight-percent.

(ii) For purposes of this section, the group determination procedure required by § 63.1323 shall not apply.

19. Amend § 63.1316 by revising the section title, paragraphs (b)(1)(i), (b)(1)(ii), (b)(2)(i), and (b)(2)(ii); and adding paragraphs (b)(1)(v) and (b)(2)(v), to read as follows:

§ 63.1316 PET and polystyrene affected sources—emissions control provisions.

* * * * *

(b) * * *

(1) * * *

(i) The owner or operator of an existing affected source with organic HAP emissions greater than 0.12 kg organic HAP per Mg of product from continuous process vents in the collection of material recovery sections (i.e., methanol recovery) within the affected source shall comply with either paragraph (b)(1)(i)(A), (b)(1)(i)(B), or (b)(1)(i)(C) of this section. Emissions from continuous process vents in the collection of material recovery sections within the affected source shall be determined by the procedures specified in § 63.1318(b). The owner or operator of a new affected source shall comply with either paragraph (b)(1)(i)(A), (b)(1)(i)(B), or (b)(1)(i)(C) of this section.

(A) Organic HAP emissions from all continuous process vents in each individual material recovery section shall, as a whole, be no greater than 0.018 kg organic HAP per Mg of product from the associated TPPU(s); or alternatively, organic HAP emissions from all continuous process vents in the collection of material recovery sections within the affected source shall, as a whole, be no greater than 0.018 kg organic HAP per Mg product from all associated TPPU(s);

(B) As specified in § 63.1318(d), the owner or operator shall maintain the daily average outlet gas stream temperature from each final condenser in a material recovery section at a temperature of +3°C (+37°F) or less (i.e., colder); or

(C) Comply with paragraph (b)(1)(v) of this section.

(ii) Limit organic HAP emissions from continuous process vents in the collection of polymerization reaction sections within the affected source by complying with either paragraph (b)(1)(ii)(A) or (b)(1)(ii)(B) of this section.

(A) Organic HAP emissions from all continuous process vents in each individual polymerization reaction section within the affected source (including emissions from any equipment used to further recover ethylene glycol, but excluding emissions from process contact cooling towers) shall, as a whole, be no greater than 0.02 kg organic HAP per Mg of product from the associated TPPU(s); or alternatively, organic HAP emissions from all continuous process vents in the collection of polymerization reaction sections within the affected source shall, as a whole, be no greater than 0.02 kg organic HAP per Mg product from all associated TPPU(s); or

(B) Comply with paragraph (b)(1)(v) of this section.

* * * * *

(v) Comply with one of the following:

(A) Reduce the emissions in a combustion device to achieve 98 weight percent reduction or to achieve a concentration of 20 parts per million by volume (ppmv) on a dry basis, whichever is less stringent. If an owner or operator elects to comply with the 20 ppmv standard, the concentration shall include a correction to 3 percent oxygen only when supplemental combustion air is used to combust the emissions;

(B) Combust the emissions in a boiler or process heater with a design heat input capacity of 150 million Btu/hr or greater by introducing the emissions into the flame zone of the boiler or process heater; or

(C) Combust the emissions in a flare that complies with the requirements of § 63.1333(e).

(2) * * *

(i) Limit organic HAP emissions from continuous process vents in the collection of raw material preparation sections within the affected source by complying with either paragraph (b)(2)(i)(A) or (b)(2)(i)(B) of this section.

(A) Organic HAP emissions from all continuous process vents associated with the esterification vessels in each individual raw materials preparation section shall, as a whole, be no greater than 0.04 kg organic HAP per Mg of product from the associated TPPU(s); or alternatively, organic HAP emissions from all continuous process vents associated with the esterification vessels in the collection of raw material preparation sections within the affected source shall, as a whole, be no greater than 0.04 kg organic HAP per Mg of product from all associated TPPU(s). Other continuous process vents (i.e., those not associated with the esterification vessels) in the collection of raw materials preparation sections within the affected source shall comply with § 63.1315; or

(B) Comply with paragraph (b)(2)(v) of this section.

(ii) Limit organic HAP emissions from continuous process vents in the

collection of polymerization reaction sections within the affected source by complying with either paragraph (b)(2)(ii)(A) or (b)(2)(ii)(B) of this section.

(A) Organic HAP emissions from all continuous process vents in each individual polymerization reaction section (including emissions from any equipment used to further recover ethylene glycol, but excluding emissions from process contact cooling towers) shall, as a whole, be no greater than 0.02 kg organic HAP per Mg of product from the associated TPPU(s); or alternatively, organic HAP emissions from all continuous process vents in the collection of polymerization reaction sections within the affected source shall, as a whole, be no greater than 0.02 kg organic HAP per Mg of product from all associated TPPU(s); or

(B) Comply with paragraph (b)(2)(v) of this section.

* * * * *

(v) Comply with one of the following:

(A) Reduce the emissions in a combustion device to achieve 98 weight percent reduction or to achieve a concentration of 20 parts per million by volume (ppmv) on a dry basis, whichever is less stringent. If an owner or operator elects to comply with the 20 ppmv standard, the concentration shall include a correction to 3 percent oxygen only when supplemental combustion air is used to combust the emissions;

(B) Combust the emissions in a boiler or process heater with a design heat input capacity of 150 million Btu/hr or greater by introducing the emissions into the flame zone of the boiler or process heater; or

(C) Combust the emissions in a flare that complies with the requirements of § 63.1333(e).

* * * * *

20. Amend § 63.1321 by adding paragraph (d), to read as follows:

§ 63.1321 Batch process vents provisions.

* * * * *

(d) Owners and operators of affected sources producing ASA/AMSAN shall comply with the provisions of § 63.1315(e).

21. Amend § 63.1322 by revising paragraph (b)(2), to read as follows:

§ 63.1322 Batch process vents—reference control technology.

* * * * *

(b) * * *

(2) For each aggregate batch vent stream, reduce organic HAP emissions by 90 weight percent or to a concentration of 20 parts per million by volume, whichever is less stringent, on a continuous basis using a control device. For purposes of complying with the 20 parts per million by volume outlet concentration standard, the outlet concentration shall be calculated on a dry basis. When a combustion device is used for purposes of complying with the 20 parts per million by volume outlet concentration standard, the concentration shall be corrected to 3 percent oxygen if supplemental combustion air is used to combust the emissions. If supplemental combustion air is not used, a correction to 3 percent oxygen is not required.

* * * * *

22. Amend § 63.1323 by revising paragraph (a)(2), to read as follows:

§ 63.1323 Batch process vents—methods and procedures for group determination.

(a) * * *

(2) The annual uncontrolled organic HAP or TOC emissions and annual average batch vent flow rate shall be determined at the exit from the batch unit operation. For the purposes of these determinations, the primary condenser operating as a reflux condenser on a reactor or distillation column, the primary condenser recovering monomer, reaction products, by-products, or solvent from a stripper operated in batch mode, and the primary condenser recovering monomer, reaction products, by-products, or solvent from a distillation operation operated in batch mode shall be considered part of the batch unit operation. All other devices that recover or oxidize organic HAP or TOC vapors shall be considered control devices as defined in § 63.1312.

* * * * *

23. Amend § 63.1325 by revising paragraph (e) introductory text and adding paragraph (e)(3), to read as follows:

§ 63.1325 Batch process vents—performance test methods and procedures to determine compliance.

* * * * *

(e) *Aggregate batch vent stream testing for compliance with § 63.1322(b)(2) or (b)(3).* Except as specified in paragraphs (e)(1) through (e)(3) of this section, owners or operators of aggregate batch vent streams complying with § 63.1322(b)(2) or (b)(3) shall conduct a performance test using the performance testing procedures for continuous process vents in § 63.116(c).

* * * * *

(3) When a combustion device is used to comply with the 20 parts per million by volume outlet concentration standard specified in § 63.1322(b)(2), the correction to 3 percent oxygen specified in the performance testing procedures of § 63.116(c)(3) and § 63.116(c)(3)(iii) is only required when supplemental combustion air is used to combust the emissions, for the purposes of this subpart.

* * * * *

24. Amend § 63.1326 by revising paragraph (b)(4) introductory text and adding paragraph (b)(5), to read as follows:

§ 63.1326 Batch process vents—recordkeeping provisions.

* * * * *

(b) * * *

(4) The following information when using a control device to meet the percent reduction requirement specified in § 63.1322(a)(2), (a)(3), (b)(2), or (b)(3):

* * * * *

(5) When complying with the 20 parts per million by volume outlet concentration standard specified in § 63.1322(b)(2), records of the outlet concentration of organic HAP or TOC on a dry basis. If supplemental combustion air is used to combust the emissions, the outlet concentration shall be corrected to 3 percent oxygen. If supplemental combustion air is not used, a correction to 3 percent oxygen is not required.

* * * * *

25. Amend § 63.1330 by adding and reserving paragraph (c), and paragraphs (d) and (e), to read as follows:

§ 63.1330 Wastewater provisions.

* * * * *

(c) [*Reserved*]

(d) The provisions of paragraph (b) of this section do not apply to each affected source producing ASA/AMSAN.

(e) The provisions of paragraphs (a), (b), and (c) of this section do not apply to each affected source producing polystyrene using either a continuous or batch process.

26. Amend § 63.1332 by revising paragraphs (a)(2), (a)(3) introductory text, (c) introductory text, (c)(3), (d)(5), (e)(3)(ii), (e)(5), (g)(1), (g)(2)(ii)(A), (g)(7)(ii)(A), (h)(1) introductory text, (h)(6)(ii) introductory text, (h)(7)(ii) introductory text (the equation remains unchanged), (i)(1) introductory text, (i)(1)(iii), (i)(2), (i)(3), (i)(5) introductory text, (i)(5)(i), (j)(2) introductory text, (j)(2)(ii)(B), (j)(2)(iv), (j)(2)(v), (k) introductory text, (k)(4) introductory text, and (l) introductory text, to read as follows:

§ 63.1332 Emissions averaging provisions.

(a) * * *

(2) Compliance with the provisions of this section may be based on either organic HAP or TOC.

(3) For the purposes of these provisions, whenever Method 18, 40 CFR part 60, appendix A, is specified within the paragraphs of this section or is specified by reference through provisions outside this section, Method 18 or Method 25A, 40 CFR part 60, appendix A, may be used. The use of Method 25A, 40 CFR part 60, appendix A, shall conform with the requirements in paragraphs (a)(3)(i) and (a)(3)(ii) of this section.

* * * * *

(c) Paragraphs (c)(1) through (c)(5) of this section describe the emission points that may be used to generate emissions averaging credits if control was applied after November 15, 1990, and if sufficient information is available to determine the appropriate value of credits for the emission point. Paragraph (c)(6) of this section discusses the use of pollution prevention in generating emissions averaging credits.

* * * * *

(3) Storage vessels, continuous process vents subject to § 63.1315, and process wastewater streams that are determined to be Group 1 emission points and that are controlled by a technology that the Administrator or permitting authority agrees has a higher nominal efficiency than the reference control technology. Information on the nominal efficiencies for such technologies shall be submitted and approved as provided in paragraph (i) of this section.

* * * * *

(d) * * *

(5) Emission points controlled to comply with a State or Federal rule other than this subpart cannot be used to generate credits, unless the level of control has been increased after November 15, 1990, to a level above what is required by the other State or Federal rule. Only the control above what is required by the other State or Federal rule will be credited. However, if an emission point has been used to generate emissions averaging credit in an approved emissions average, and the emission point is subsequently made subject to a State or Federal rule other than this subpart, the emission point may continue to generate emissions averaging credit for the purpose of complying with the previously approved emissions average.

(e) * * *

(3) * * *

(ii) The initial demonstration in the Emissions Averaging Plan or operating permit application that credit-generating emission points will be capable of generating sufficient credits to offset the debits from the debit-generating emission points shall be made under representative operating conditions. After the compliance date, actual operating data will be used for all debit and credit calculations.

(4) * * *

(5) Record and report quarterly and annual credits and debits in the Periodic Reports as specified in § 63.1335(e)(6). Every fourth Periodic Report shall include a certification of compliance with the emissions averaging provisions as required by § 63.1335(e)(6)(x)(C)(*2*).

* * * * *

(g) * * *

(1) Source-wide debits shall be calculated using Equation 28 of this subpart. Debits and all terms of Equation 28 of this subpart are in units of megagrams per month:

$$\begin{aligned}\text{Debits} = &\sum_{i=1}^{n}\left(\text{ECPV}_{\text{iACTUAL}} - (0.02)\ \text{ECPV}_{\text{iu}}\right) + \sum_{j=1}^{n}\left(\text{ECPVS}_{\text{jACTUAL}} - \text{ECPVS}_{\text{jSTD}}\right)\\ &+\sum_{i=1}^{n}\left(\text{ES}_{\text{iACTUAL}} - (b)\ \text{ES}_{\text{iu}}\right) + \sum_{i=1}^{n}\left(\text{EWW}_{\text{iACTUAL}} - \text{EWW}_{\text{ic}}\right)\\ &+\sum_{i=1}^{n}\left(\text{EBPV}_{\text{iACTUAL}} - (0.10)\ \text{EBPV}_{\text{iu}}\right) + \sum_{i=1}^{n}\left(\text{EABV}_{\text{iACTUAL}} - (0.10)\ \text{EABV}_{\text{iu}}\right) \qquad \text{[Eq. 28]}\end{aligned}$$

Where:

$ECPV_{iACTUAL}$ = Emissions from each Group 1 continuous process vent i subject to § 63.1315 that is uncontrolled or is controlled to a level less stringent than the applicable reference control technology. $ECPV_{iACTUAL}$ is calculated according to paragraph (g)(2) of this section.

$(0.02)ECPV_{iu}$ = Emissions from each Group 1 continuous process vent i subject to § 63.1315 if the applicable reference control technology had been applied to the uncontrolled emissions. $ECPV_{iu}$ is calculated according to paragraph (g)(2) of this section.

$ECPVS_{jACTUAL}$ = Emissions from Group 1 continuous process vents subject to § 63.1316(b)(1)(i), (b)(1)(ii), (b)(2)(i), (b)(2)(ii), or (c)(1) located in the collection of process sections j within the affected source that are uncontrolled or controlled to a level less stringent than the applicable standard. $ECPVS_{jACTUAL}$ is calculated according to paragraph (g)(3) of this section.

$ECPVS_{jSTD}$ = Emissions from Group 1 continuous process vents subject to § 63.1316(b)(1)(i), (b)(1)(ii), (b)(2)(i), (b)(2)(ii), or (c)(1) located in the collection of process sections j within the affected source if the applicable standard had been applied to the uncontrolled emissions. $ECPVS_{jSTD}$ is calculated according to paragraph (g)(3) of this section.

$ES_{iACTUAL}$ = Emissions from each Group 1 storage vessel i that is uncontrolled or is controlled to a level less stringent than the applicable reference control technology or standard. $ES_{iACTUAL}$ is calculated according to paragraph (g)(4) of this section.

$(BL)ES_{iu}$ = Emissions from each Group 1 storage vessel i if the applicable reference control technology or standard had been applied to the uncontrolled emissions. ES_{iu} is calculated according to paragraph (g)(4) of this section. For calculating emissions, BL = 0.05 for each Group 1 storage vessel i subject to § 63.1314(a); and BL = 0.02 for each storage vessel i subject to § 63.1314(c).

$EWW_{iACTUAL}$ = Emissions from each Group 1 wastewater stream i that is uncontrolled or is controlled to a level less stringent than the applicable reference control technology. $EWW_{iACTUAL}$ is calculated according to paragraph (g)(5) of this section.

EWW_{ic} = Emissions from each Group 1 wastewater stream i if the reference control technology had been applied to the uncontrolled emissions. EWW_{ic} is calculated according to paragraph (g)(5) of this section.

$EBPV_{iACTUAL}$ = Emissions from each Group 1 batch process vent i that is uncontrolled or is controlled to a level less stringent than the applicable standard. $EBPV_{ACTUAL}$ is calculated according to paragraph (g)(6) of this section.

$(0.10)EBPV_{iu}$ = Emissions from each Group 1 batch process vent i if the applicable standard had been applied to the uncontrolled emissions. $EBPV_{iu}$ is calculated according to paragraph (g)(6) of this section.

$EABV_{iACTUAL}$ = Emissions from each Group 1 aggregate batch vent stream i that is uncontrolled or is controlled to a level less stringent than the applicable standard. $EABPV_{iACTUAL}$ is calculated according to paragraph (g)(7) of this section.

(0.10)$EABV_{iu}$ = Emissions from each Group 1 aggregate batch vent stream i if the applicable standard had been applied to the uncontrolled emissions. $EABV_{iu}$ is calculated according to paragraph (g)(7) of this section.

n = The number of emission points being included in the emissions average.

(2) * * *

(ii) * * *

(A) The values of Q and Cj shall be determined during a performance test conducted under representative operating conditions. The values of Q and Cj shall be established in the Notification of Compliance Status and shall be updated as provided in paragraph (g)(2)(ii)(B) of this section.

* * * * *

(7) * * *

(ii) * * *

(A) The values of Q and Cj shall be determined during a performance test conducted under representative operating conditions. The values of Q and Cj shall be established in the Notification of Compliance Status and shall be updated as provided in paragraph (g)(7)(ii)(B) of this section.

* * * * *

(h) * * *

(1) Sourcewide credits shall be calculated using Equation 35 of this subpart. Credits and all terms of Equation 35 of this subpart are in units of megagrams per month, and the baseline date is November 15, 1990:

$$\begin{aligned}
\text{Credits} = {} & D\sum_{i=1}^{n}\left((0.02)\ ECPV1_{iu} - ECPV1_{iACTUAL}\right) + D\sum_{j=1}^{n}\left(ECPVS1_{jSTD} - ECPVS1_{jACTUAL}\right) \\
& + D\sum_{i=1}^{m}\left(ECPV2_{iBASE} - ECPV2_{iACTUAL}\right) + D\sum_{j=1}^{m}\left(ECPVS2_{jBASE} - ECPVS2_{jACTUAL}\right) \\
& + D\sum_{i=1}^{n}\left((BL)\ ES1_{iu} - ES1_{iACTUAL}\right) + D\sum_{i=1}^{m}\left(ES2_{iBASE} - ES2_{iACTUAL}\right) \\
& + D\sum_{i=1}^{n}\left(EWW1_{ic} - EWW1_{iACTUAL}\right) + D\sum_{i=1}^{m}\left(EWW2_{iBASE} - EWW2_{iACTUAL}\right) \\
& + D\sum_{i=1}^{n}\left((0.10)\ EBPV1_{iu} - EBPV1_{iACTUAL}\right) + D\sum_{i=1}^{n}\left((0.10)\ EABV1_{iu} - EABV1_{iACTUAL}\right) \\
& + D\sum_{i=1}^{m}\left(EBPV2_{iBASE} - EBPV2_{iACTUAL}\right) + D\sum_{i=1}^{m}\left(EABV2_{iBASE} - EABV2_{iACTUAL}\right) \qquad \text{[Eq. 35]}
\end{aligned}$$

Where:

D = Discount factor = 0.9 for all credit generating emission points except those controlled by a pollution prevention measure; discount factor = 1.0 for each credit generating emission point controlled by a pollution prevention measure (i.e., no discount provided).

$ECPV1_{iACTUAL}$ = Emissions for each Group 1 continuous process vent i subject to § 63.1315 that is controlled to a level more stringent than the reference control technology. $ECPV1_{iACTUAL}$ is calculated according to paragraph (h)(2) of this section.

(0.02)$ECPV1_{iu}$ = Emissions from each Group 1 continuous process vent i subject to § 63.1315 if the applicable reference control technology had been applied to the uncontrolled emissions. $ECPV1_{iu}$ is calculated according to paragraph (h)(2) of this section.

$ECPVS1_{jSTD}$ = Emissions from Group 1 continuous process vents subject to § 63.1316(b)(1)(i), (b)(1)(ii), (b)(2)(i), (b)(2)(ii), or (c)(1) located in the collection of process sections j within the affected source if the applicable standard had been applied to the uncontrolled emissions. $ECPVS1_{jSTD}$ is calculated according to paragraph (h)(3) of this section.

$ECPVS1_{jACTUAL}$ = Emissions from Group 1 continuous process vents subject to § 63.1316(b)(1)(i), (b)(1)(ii), (b)(2)(i), (b)(2)(ii), or (c)(1) located in the collection of process sections j within the affected source that are controlled to a level more stringent than the applicable standard. $ECPVS1_{jACTUAL}$ is calculated according to paragraph (h)(3) of this section.

$ECPV2_{iACTUAL}$ = Emissions from each Group 2 continuous process vent i subject to § 63.1315 that is controlled. $ECPV2_{iACTUAL}$ is calculated according to paragraph (h)(2) of this section.

$ECPV2_{iBASE}$ = Emissions from each Group 2 continuous process vent i subject to § 63.1315 at the baseline date. $ECPV2_{iBASE}$ is calculated according to paragraph (h)(2) of this section.

$ECPVS2_{jBASE}$ = Emissions from Group 2 continuous process vents subject to § 63.1316(b)(1)(i) located in the collection of material recovery sections j within the affected source at the baseline date. $ECPVS2_{jBASE}$ is calculated according to paragraph (h)(3) of this section.

$ECPVS2_{jACTUAL}$ = Emissions from Group 2 continuous process vents subject to § 63.1316(b)(1)(i) located in the collection of material recovery sections j within the affected source that are controlled. $ECPVS2_{jACTUAL}$ is calculated according to paragraph (h)(3) of this section.

$ES1_{iACTUAL}$ = Emissions from each Group 1 storage vessel i that is controlled to a level more stringent than the applicable reference control technology or standard. $ES1_{iACTUAL}$ is calculated according to paragraph (h)(4) of this section.

(BL)$ES1_{iu}$ = Emissions from each Group 1 storage vessel i if the applicable reference control technology or standard had been applied to the uncontrolled emissions. $ES1_{iu}$ is calculated according to paragraph (h)(4) of this section. For calculating these emissions, BL = 0.05 for each Group 1 storage vessel i subject to § 63.1314(a); and BL = 0.02 for each storage vessel i subject to § 63.1314(c).

$ES2_{iACTUAL}$ = Emissions from each Group 2 storage vessel i that is controlled. $ES2_{iACTUAL}$ is calculated according to paragraph (h)(4) of this section.

$ES2_{iBASE}$ = Emissions from each Group 2 storage vessel i at the baseline date. $ES2_{iBASE}$ is calculated according to paragraph (h)(4) of this section.

$EWW1_{iACTUAL}$ = Emissions from each Group 1 wastewater stream i that is controlled to a level more stringent than the reference control technology. $EWW1_{iACTUAL}$ is calculated according to paragraph (h)(5) of this section.

$EWW1_{ic}$ = Emissions from each Group 1 wastewater stream i if the reference control technology had been applied to the uncontrolled emissions. $EWW1_{ic}$ is calculated according to paragraph (h)(5) of this section.

$EWW2_{iACTUAL}$ = Emissions from each Group 2 wastewater stream i that is controlled.

$EWW2_{iACTUAL}$ is calculated according to paragraph (h)(5) of this section.

$EWW2_{iBASE}$ = Emissions from each Group 2 wastewater stream i at the baseline date. $EWW2_{iBASE}$ is calculated according to paragraph (h)(5) of this section.

(0.10)$EBPV1_{iu}$ = Emissions from each Group 1 batch process vent i if the applicable standard had been applied to the uncontrolled emissions. $EBPV1_{iu}$ is calculated according to paragraph (h)(6) of this section.

$EBPV1_{iACTUAL}$ = Emissions from each Group 1 batch process vent i that is controlled to a level more stringent than the applicable standard. $EBPV1_{iACTUAL}$ is calculated according to paragraph (h)(6) of this section.

(0.10)$EABV1_{iu}$ = Emissions from each Group 1 aggregate batch vent stream i if the applicable standard had been applied to the uncontrolled emissions. $EABV1_{iu}$ is calculated according to paragraph (h)(7) of this section.

$EABV1_{iACTUAL}$ = Emissions from each Group 1 aggregate batch vent stream i that is controlled to a level more stringent than the applicable standard. $EABV1_{iACTUAL}$ is calculated according to paragraph (h)(7) of this section.

$EBPV2_{iBASE}$ = Emissions from each Group 2 batch process vent i at the baseline date. $EBPV2_{iBASE}$ is calculated according to paragraph (h)(6) of this section.

$EBPV2_{iACTUAL}$ = Emissions from each Group 2 batch process vent i that is controlled. $EBPV2_{iACTUAL}$ is calculated according to paragraph (h)(6) of this section.

$EABV2_{iBASE}$ = Emissions from each Group 2 aggregate batch vent stream i at the baseline date. $EABV2_{iBASE}$ is calculated according to paragraph (h)(7) of this section.

$EABV2_{iACTUAL}$ = Emissions from each Group 2 aggregate batch vent stream i that is controlled. $EABV2_{iACTUAL}$ is calculated according to paragraph (h)(7) of this section.

n = Number of Group 1 emission points included in the emissions average. The value of n is not necessarily the same for continuous process vents, batch process vents, aggregate batch vent streams, storage vessels, wastewater streams, or the collection of process sections within the affected source.

m = Number of Group 2 emission points included in the emissions average. The value of m is not necessarily the same for continuous process vents, batch process vents, aggregate batch vent streams, storage vessels, wastewater streams, or the collection of process sections within the affected source.

* * * * *

(6) * * *

(ii) Actual emissions from Group 1 batch process vents controlled to a level more stringent than the standard ($EBPV1_{iACTUAL}$) shall be calculated using Equation 40 of this subpart, where percent reduction is for the batch cycle:

$$EBPV1_{iACTUAL} = EBPV1_{iu}\left(1 - \frac{\text{Percent reduction}}{100\%}\right) \qquad \text{[Eq. S 40]}$$

* * * * *

(7) * * *

(ii) Actual emissions from Group 1 aggregate batch vent streams controlled to a level more stringent than the standard ($EABV1_{iACTUAL}$) shall be calculated using Equation 43 of this subpart:

[Equation 43 is unchanged.]

* * * * *

(i) * * *

(1) In those cases where the owner or operator is seeking permission to take credit for use of a control technology that is different in use or design from the reference control technology, and the different control technology will be used in more than three applications at a single plant-site, the owner or operator shall submit the information specified in paragraphs (i)(1)(i) through (i)(1)(iv) of this section, as specified in § 63.1335(e)(7)(ii), to the Director of the EPA Office of Air Quality Planning and Standards in writing:

* * * * *

(iii) Documentation demonstrating to the Administrator's satisfaction the control efficiency of the control technology. This may include performance test data collected using an appropriate EPA Method or any other method validated according to Method 301, 40 CFR part 63, appendix A, of this part. If it is infeasible to obtain test data, documentation may include a design evaluation and calculations. The engineering basis of the calculation procedures and all inputs and assumptions made in the calculations shall be documented.

* * * * *

(2) The Administrator shall determine within 120 days whether an application presents sufficient information to determine nominal efficiency. The Administrator reserves the right to request specific data in addition to the items listed in paragraph (i)(1) of this section.

(3) The Administrator shall determine within 120 days of the submittal of sufficient data whether a control technology shall have a nominal efficiency and the level of that nominal efficiency. If, in the Administrator's judgment, the control technology achieves a level of emission reduction greater than the reference control technology for a particular kind of emission point, the Administrator will publish a **Federal Register** notice establishing a nominal efficiency for the control technology.

* * * * *

(5) In those cases where the owner or operator is seeking permission to take credit for use of a control technology that is different in use or design from the reference control technology and the different control technology will be used in no more than three applications at a single plant site, the owner or operator shall submit the information listed in paragraphs (i)(1)(i) through (i)(1)(iv) of this section, as specified in § 63.1335(e)(7)(ii), to the Administrator.

(i) In these instances, use and conditions for use of the control technology may be approved by the permitting authority as part of an operating permit application or modification. The permitting authority shall follow the procedures specified in paragraphs (i)(2) through (i)(4) of this section except that, in these instances, a **Federal Register** notice is not required to establish the nominal efficiency for the different technology.

* * * * *

(j) * * *

(2) The emission reduction efficiency of pollution prevention measures implemented after November 15, 1990, may be used in calculating the actual emissions from an emission point in the debit and credit equations in paragraphs (g) and (h) of this section.

* * * * *

(ii) * * *

(B) For wastewater, E_B shall be calculated using Equation 47 of this subpart:

$$E_B = \sum_{i=1}^{n}\left[\left(6.0*10^{-8}\right) Q_{Bi} H_{Bi} \sum_{m=1}^{S} Fe_m HAP_{Bim}\right] \qquad \text{[Eq. 47]}$$

Where:
n = Number of wastewater streams.
Q_{Bi} = Annual average flow rate for wastewater stream i before the pollution prevention measure, defined and determined according to § 63.144(c)(3), liters per minute, before implementation of the pollution prevention measure.
H_{Bi} = Number of hours per month that wastewater stream i was discharged before the pollution prevention measure, hours per month.
s = Total number of organic HAP in wastewater stream i.
F_{em} = Fraction emitted of organic HAP m in wastewater from Table 34 of subpart G of this part, dimensionless.
HAP_{Bim} = Annual average concentration of organic HAP m in wastewater stream i, defined and determined according to paragraph § 63.150(g)(5)(i) of this section, before the pollution prevention measure, parts per million by weight, as measured before the implementation of the pollution measure.

* * * * *

(iv) The same pollution prevention measure may reduce emissions from multiple emission points. In such cases, the percent reduction in emissions for each emission point shall be calculated.

(v) For the purposes of the equations in paragraphs (h)(2) through (h)(7) of this section used to calculate credits for emission points controlled more stringently than the reference control technology or standard, the nominal efficiency of a pollution prevention measure is equivalent to the percent reduction of the pollution prevention measure. When a pollution prevention measure is used, the owner or operator of an affected source is not required to apply to the Administrator for a nominal efficiency and is not subject to paragraph (i) of this section.

(k) The owner or operator shall demonstrate that the emissions from the emission points proposed to be included in the emissions average will not result in greater hazard or, at the option of the Administrator, greater risk to human health or the environment than if the emission points were controlled according to the provisions in §§ 63.1314, 63.1315, 63.1316 through 63.1320, 63.1321, and 63.1330.

* * * * *

(4) A hazard or risk equivalency demonstration shall:

* * * * *

(l) For periods of parameter monitoring excursions, an owner or operator may request that the provisions of paragraphs (l)(1) through (l)(4) of this section be followed instead of the procedures in paragraphs (f)(2)(i) and (f)(2)(ii) of this section.

* * * * *

27. Amend § 63.1335 by revising paragraph (e)(4)(ii)(L)(*1*), to read as follows:

§ 63.1335 General recordkeeping and reporting provisions.

* * * * *

(e) * * *
(4) * * *
(ii) * * *
(L) * * *
(*1*) The required documentation shall include the data used to determine whether the wastewater stream is a Group 1 or Group 2 wastewater stream.

* * * * *

28. Revise Tables 3 and 5 to subpart JJJ of Part 63, to read as follows:

* * * * *

TABLE 3 OF SUBPART JJJ.—GROUP 1 STORAGE VESSELS AT EXISTING AFFECTED SOURCES PRODUCING THE LISTED THERMOPLASTICS

Thermoplastic	Chemical [a]	Vessel capacity (cubic meters)	Vapor pressure [b] (kilopascals)
ASA/AMSAN [c]	styrene/acrylonitrile mixture	≥ 3.78	≥ 0.47
	acrylonitrile	≥ 75.7	≥ 1.62
Polystyrene, continuous processes	all chemicals	<75.7	≥ 14.2
		≥ 75.7	
			≥ 1.9
Nitrile [c]	acrylonitrile	≥ 13.25	≥ 1.8

[a] Vessel capacity and vapor pressure criteria are specific to the listed chemical or to ''all chemicals,'' as indicated.
[b] Maximum true vapor pressure of total organic HAP at storage temperature.
[c] The applicability criteria in Table 2 of this subpart shall be used for chemicals not specifically listed in this table (i.e., Table 3).

* * * * *

TABLE 5 OF SUBPART JJJ.—GROUP 1 STORAGE VESSELS AT NEW AFFECTED SOURCES PRODUCING THE LISTED THERMOPLASTICS

Thermoplastic	Chemical [a]	Vessel capacity (cubic meters)	Vapor pressure [b] (kilopascals)
ASA/AMSAN [c]	Styrene/ acrylonitrile mixture	≥ 3.78	≥ 0.47
	Acrylonitrile	≥ 75.7	≥ 1.62
SAN, continuous [d]	All chemicals	≥ 2,271	≥ 0.5 and < 0.7
		< 151	≥ 10
		≥ 151	≥ 0.7
Nitrile [c]	Acrylonitrile	≥ 13.25	≥ 1.8
Polystyrene, continuous processes	All chemicals	≥ 19.6 and <45.4	≥ 7.48
		≥ 45.4 and <109.8	≥ 0.61
		≥ 109.8	≥ 0.53

TABLE 5 OF SUBPART JJJ.—GROUP 1 STORAGE VESSELS AT NEW AFFECTED SOURCES PRODUCING THE LISTED THERMOPLASTICS—Continued

Thermoplastic	Chemical [a]	Vessel capacity (cubic meters)	Vapor pressure [b] (kilopascals)
ABS, continuous mass	Styrene	≥ 45.43	≥ 0.078
	All other chemicals	≥ 38 and < 45.43	≥ 13.1
		≥ 45.43	≥ 0.53

[a] Vessel capacity and vapor pressure criteria are specific to the listed chemical, to ''all chemicals,'' or to ''all other chemicals,'' as indicated.
[b] Maximum true vapor pressure of total organic HAP at storage temperature.
[c] The applicability criteria in Table 4 of this subpart shall be used for chemicals not specifically listed in this table (i.e., Table 5).
[d] The control level for the first two sets of applicability criteria are specified in 63.1314 as 90% and 98%, respectively. The control level for the third set of applicability criteria is the HON control level of 95%.

* * * * *

[FR Doc. 99–3799 Filed 3–8–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[AD–FRL–6301–5]

RIN 2060–AH–47

National Emission Standards for Hazardous Air Pollutants Emissions: Group I Polymers and Resins and Group IV Polymers and Resins and Standards of Performance for Volatile Organic Compound (VOC) Emissions From the Polymer Manufacturing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On September 5, 1996, the EPA issued the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Group I Polymers and Resins (61 FR 46906); on September 12, 1996, the EPA issued the Group IV Polymers and Resins NESHAP (61 FR 48208); and on December 11, 1990, the EPA issued the Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry (55 FR 51035). This action proposes to revise the promulgated rules by adding provisions, correcting errors, and making clarifications in all of the above-mentioned rulemakings.

DATES: *Comments.* Comments must be received on or before April 8, 1999, unless a hearing is requested by March 19, 1999. If a hearing is requested, written comments must be received by April 23, 1999.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by March 19, 1999, a public hearing will be held in Research Triangle Park, North Carolina, beginning at 10 a.m. on March 23, 1999. Persons interested in attending the hearing should call Ms. Marguerite Thweatt at (919) 541–5673 to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by March 19, 1999 by contacting Ms. Marguerite Thweatt, Organic Chemicals Group (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5673.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–92–44 (Group I Polymers and Resins) and/or Docket Number A–92–45 (Group IV Polymers and Resins), Room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**). Comments may also be submitted electronically by following the instructions provided in SUPPLEMENTARY INFORMATION.

Docket. Docket numbers A–92–44 and A–92–45, containing information relevant to this proposed rulemaking, are available for public inspection between 8 a.m. and 5:30 p.m., Monday through Friday (except for Federal holidays) at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (MC–6102), 401 M Street, SW, Washington, DC 20460, telephone: (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Robert E. Rosensteel, Organic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5608.

SUPPLEMENTARY INFORMATION:

Regulated Entities

The regulated category and entities affected by this action include:

Category	Examples of regulated entities
Industry	Butyl Rubber, Halobutyl Rubber, Epichlorohydrin Elastomer, Ethylene Propylene Rubber, Hypalon™, Neoprene, Nitrile Butadiene Rubber, Nitrile Butadiene Latex, Polybutadiene Rubber, Styrene-Butadiene Rubber or Latex, Acrylonitrile Butadiene Styrene Resin, Styrene Acrylonitrile Resin, Methyl Methacrylate Acrylonitrile Butadiene Styrene Resin, Methyl Methacrylate Butadiene Styrene Resin, Poly(ethylene terephthalate) Resin, Polystyrene Resin, and Nitrile Resin producers.

This table is not intended to be exhaustive but, rather, provides a guide for readers likely to be interested in the revisions to the regulations affected by this action. To determine whether your facility is regulated by this action, you should carefully examine all of the applicability criteria in the promulgated versions of subpart U and JJJ (61 FR 46906 and 61 FR 48208, respectively), as well as in the proposed amendments to the applicability sections (§§ 63.480 and 63.1310). If you have any questions regarding the applicability of this proposal to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Electronic Access and Filing Addresses

This proposal, its accompanying Direct Final Rule, the promulgated texts, and other background information are available in Docket Numbers A–92–44 and A–92–45 or by request from the EPA's Air and Radiation Docket and Information Center (see **ADDRESSES**). These documents can also be accessed through the EPA web site at: http://www.epa.gov/ttn/oarpg. For further information and general questions regarding the Technology Transfer Network (TTN), call Mr. Hersch Rorex, (919) 541–5637; or Mr. Phil Dickerson, (919) 541–4814.

Electronic comments and data may be submitted by sending electronic mail (e-mail) to: a-and-r-docket@epamail.epa.gov. Submit comments as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on diskette in Word Perfect 5.1 or 6.1 or ACSII file format. Identify all comments and data in electronic form by the docket numbers A–92–44 and/or A–92–45. No Confidential Business Information (CBI) should be submitted through electronic mail. Electronic comments may be filed online at many Federal Depository Libraries.

If no relevant, adverse comments are timely received, no further activity is contemplated in relation to this proposed rule, and the direct final rule in the final rules section of this **Federal Register** will automatically go into effect on the date specified in that rule. If relevant adverse comments are timely received, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule. Because the EPA will not institute a second comment period on this proposed rule, any

parties interested in commenting should do so during this comment period.

For further supplemental information and the rule provisions, see the information provided in the direct final rule in the final rules section of this **Federal Register**.

Administrative Requirements

I. Docket

The docket is an organized and complete file of all the information considered by the EPA in the development of a rule. 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 will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Act.)

II. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must submit to the Office of Management and Budget (OMB) for review significant regulatory actions. The Executive Order defines ''significant regulatory action'' as one that OMB determines is likely to result in a rule that may:

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

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

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

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

It has been determined that this proposal does not qualify as a ''significant regulatory action'' under the terms of Executive Order 12866 and, therefore, is not subject to review by the Office of Management and Budget.

III. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, the 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 proposed amendments do not create a mandate on State, local or tribal governments. These proposed amendments do not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to these proposed amendments.

IV. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, the 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 the 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 proposed do not significantly or uniquely affect the communities of Indian tribal governments. These amendments do not impose any duties or compliance costs on Indian tribal governments. Further, the proposed amendments provided herein do not significantly alter the control standards imposed by subpart U or subpart JJJ for any source, including any that may affect communities of the Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to these proposed amendments.

V. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

The EPA has determined that this proposal does not include a Federal mandate that may result in estimated costs of, in the aggregate, $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector, and that this proposal does not significantly or uniquely impact small governments, because it contains no requirements that apply to such governments or impose obligations upon them. The EPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. In addition, because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments. Therefore, the requirements of the Unfunded Mandates Act do not apply to this proposal.

VI. Regulatory Flexibility

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

small governmental jurisdictions. This proposal would not have a significant impact on a substantial number of small entities, because it clarifies and makes corrections to the promulgated versions of the Group I and IV Polymers and Resins NESHAP, but imposes no additional regulatory requirements on owners or operators of affected sources. Therefore, I certify that this proposed action will not have a significant impact on a substantial number of small entities.

VII. Paperwork Reduction Act

For both the Group I and Group IV Polymers and Resins NESHAP, the information collection requirements (ICRs) were submitted to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act.* At promulgation, OMB had already approved the ICRs for the Group IV Polymers and Resins NESHAP and assigned those standards the OMB control number 2060–0351. Subsequently, the OMB approved the ICRs for the Group I Polymers and Resins NESHAP, and on July 15, 1997 (62 FR 37720) the OMB control number 2060–0356 was assigned to the Group I Polymers and Resins NESHAP. 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 EPA has amended 40 CFR part 9, section 9.1, to indicate the ICRs contained in the Group I and IV Polymers and Resins NESHAP.

The amendments to the NESHAP contained in this proposal should have no impact on the information collection burden estimates made previously. Therefore, the ICRs have not been revised.

VIII. Applicability of Executive Order 13045

The Executive Order 13045 applies to any rule that (1) OMB determines is ''economically significant'' as defined under Executive Order 12866, and (2) EPA determines 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 aspects of the planned rule on children; and explain why the regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposal is not subject to Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

IX. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) directs all Federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling and analytical procedures, business practices, etc.) that are developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA requires Federal agencies like EPA to provide Congress, through OMB, with explanations when an agency decides not to use available and applicable voluntary consensus standards.

As part of a larger effort, the EPA is undertaking a project to cross-reference existing voluntary consensus standards on testing, sampling, and analysis, with current and future EPA test methods. When completed, this project will assist the EPA in identifying potentially-applicable voluntary consensus standards which can then be evaluated for equivalency and applicability in determining compliance with future regulations.

List of Subjects

40 CFR Part 60

Environmental protection, Volatile Organic Compound, Air Pollution Control.

40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances.

Dated: February 10, 1999.

Carol M. Browner,

Administrator.

[FR Doc. 99–3800 Filed 3–8–99; 8:45 am]

BILLING CODE 6560–50–P

federal register

Tuesday
March 9, 1999

Part III

Environmental Protection Agency

40 CFR Part 63

National Emissions Standards for Hazardous Air Pollutant Emissions: Polymer and Resin (Groups I and IV) and Polyether Polyols Production; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6301–4]

RIN 2060–AH–47 and 2060–AE81

National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins; National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins; and National Emission Standards for Hazardous Air Pollutants for Polyether Polyols Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; Amendments.

SUMMARY: On September 5, 1996 (61 FR 46906) and September 12, 1996 (61 FR 48208), the EPA promulgated the ''National Emission Standards for Hazardous Air Pollutants: Group I Polymers and Resins,'' (40 CFR part 63, subpart U) and the ''National Emission Standards for Hazardous Air Pollutants: Group IV Polymers and Resins,'' (40 CFR part 63, subpart JJJ), respectively. In December 1996, petitions for review of the September 1996 Polymers and Resins I and IV rules were filed in the U.S. Court of Appeals for the District of Columbia Circuit. The petitioners raised over 280 technical issues and concerns with the drafting clarity of these rules. This action proposes correcting amendments to these rules to address the petitioners' issues and any other inconsistencies that were discovered during the review process. In addition, on January 17, 1997 (62 FR 2722), amendments to the hazardous organic National Emission Standards for Hazardous Air Pollutants (NESHAP) (hereafter referred to as the ''HON'') which is heavily referenced by both the Polymers and Resins I and IV NESHAP, were promulgated. These proposed amendments will update cross-references and other terminology, as necessitated by the HON amendments, and will incorporate parallel changes to those made in the HON, in sections of the Polymers and Resins I and IV NESHAP which were originally modeled after the HON. In addition, the proposed amendments to subpart U in this action apply to the Polyether Polyols Production NESHAP (subpart PPP) insofar as subpart PPP cross-references requirements found in subpart U.

DATES: *Comments.* The EPA will accept comments regarding this proposal on or before May 10, 1999.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by March 24, 1999, a public hearing will be held in Research Triangle Park, North Carolina, beginning at 10 a.m. on April 8, 1999. Persons interested in attending the hearing should call Ms. Marguerite Thweatt at (919) 541–5673 to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by March 24, 1999 by contacting Ms. Marguerite Thweatt, Organic Chemicals Group (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5673.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–92–44 (Group I Polymers and Resins) and/or Docket Number A–92–45 (Group IV Polymers and Resins), Room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**). Comments may also be submitted electronically by following the instructions provided in **SUPPLEMENTARY INFORMATION**.

Docket. Docket numbers A–92–44 and A–92–45, containing information relevant to these proposed amendments, are available for public inspection between 8 a.m. and 5:30 p.m., Monday through Friday (except for Federal holidays) at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (MC–6102), 401 M Street, SW, Washington, DC 20460. Alternatively, a docket index, as well as individual items contained within the docket, may be obtained by calling (202) 260–7548 or (202) 260–7549. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Robert E. Rosensteel, Organic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5608.

SUPPLEMENTARY INFORMATION:

Regulated Entities

The regulated category and entities affected by this action include:

Category	Examples of regulated entities
Industry	Butyl Rubber, Halobutyl Rubber, Epichlorohydrin Elastomer, Ethylene Propylene Rubber, Hypalon™, Neoprene, Nitrile Butadiene Rubber, Nitrile Butadiene Latex, Polybutadiene Rubber, Styrene-Butadiene Rubber or Latex, Acrylonitrile Butadiene Styrene Resin, Styrene Acrylonitrile Resin, Methyl Methacrylate Acrylonitrile Butadiene Styrene Resin, Methyl Methacrylate Butadiene Styrene Resin, Poly(ethylene terephthalate) Resin, Polystyrene Resin, and Nitrile Resin producers.

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the revisions to the regulations affected by this action. To determine whether your facility is regulated by this action, you should carefully examine all of the applicability criteria in the promulgated versions of subpart U and JJJ (61 FR 46906 and 61 FR 48208, respectively), as well as in the proposed amendments to the applicability sections (§§ 63.480 and 63.1310) contained in this proposal. If you have any questions regarding the applicability of these amendments to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Electronic Access and Filing Addresses

These proposed amendments, the promulgated texts, and other background information are available in Docket Numbers A–92–44 and A–92–45 or by request from the EPA's Air and Radiation Docket and Information Center (see **ADDRESSES**). These documents can also be accessed through the EPA web site at: http://www.epa.gov/ttn/oarpg. For further information and general questions regarding the TTN, call Mr. Hersch Rorex (919) 541–5637 or Mr. Phil Dickerson (919) 541–4814.

Electronic comments and data may be submitted by sending electronic mail (e-

mail) to: a-and-r-docket@epamail.epa.gov. Submit comments as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on diskette in Word Perfect 5.1 or 6.1 or ACSII file format. Identify all comments and data in electronic form by the docket numbers A–92–44 and/or A–92–45. No Confidential Business Information (CBI) should be submitted through electronic mail. Electronic comments may be filed online at many Federal Depository Libraries.

The EPA solicits comment on the specific revisions to the Polymers and Resins Group I and IV rule revisions that are described below and proposed today. The EPA is not seeking comment on portions of the two rules that the Agency is not currently proposing to change.

I. Background on Rules

On September 5, 1996 (61 FR 46906) and September 12, 1996 (61 FR 48208), the EPA issued the ''National Emission Standards for Hazardous Air Pollutants: Group I Polymers and Resins,'' (40 CFR part 63, subpart U) and the ''National Emission Standards for Hazardous Air Pollutants: Group IV Polymers and Resins,'' (40 CFR part 63, subpart JJJ), respectively. On August 26, 1996 (61 FR 43698), just prior to the promulgation of subparts U and JJJ, the EPA proposed amendments to the hazardous organic NESHAP (HON), which subparts U and JJJ both reference and were modeled after, due to similarities in Hazardous Air Pollutant (HAP) emissions and emission controls at affected sources covered by all three rules.

As a result, on November 25, 1996 (61 FR 59849), the EPA published an Advance Notice of Proposed Rulemaking (ANPR) informing the public of the EPA's intent to propose amendments to both the Group I and Group IV Polymers and Resins NESHAP as well. The amendments referred to in that ANPR include the amendments proposed by today's action, which were necessitated by the amendments to the HON, due to cross-reference changes. Because subparts U and JJJ were both modeled after the HON, the EPA determined that many of the amendments that had been made to the HON would also be appropriate for subparts U and JJJ. The EPA has already published several amendments to clarify various aspects of the Group I and Group IV Polymers and Resins NESHAP, in part due to the HON amendments, which were promulgated on January 17, 1997 (62 FR 2722). Readers should see the following **Federal Register** notices for more information: January 14, 1997 (62 FR 1835), which extended the equipment leaks compliance date for both rules; June 6, 1997 (62 FR 30993), which extended the compliance date for equipment leaks at poly(ethylene terephthalate) resin (PET) affected sources; July 15, 1997 (62 FR 37720), which made minor corrections and clarifications to the rules; February 27, 1998 (63 FR 9944), which corrected the effective date of subpart JJJ (Group IV Polymers and Resins) by changing it to February 27, 1998; in keeping with sections 801 and 808 of the Congressional Review Act, changed the compliance dates for new affected sources to February 27, 1998, and changed the compliance date once again for the equipment leak requirements in subpart JJJ, to February 27, 1998; and March 31, 1998 (63 FR 15312), which provided a temporary compliance extension until February 27, 2001 for existing affected sources producing poly(ethylene terephthalate) (PET) using the continuous terephthalic acid (TPA) high viscosity multiple end finisher process.

One of the main purposes of today's action is to incorporate the concepts and new references related to the promulgated HON amendments and to propose changes related to settlement negotiations with industry. It is important to note that the provisions of subparts U and JJJ that cross-reference the HON (or any other regulation) refer to the most recent, promulgated versions of those rules. In a recent rulemaking, on January 17, 1997 (62 FR 2722), the EPA promulgated amendments to the HON, including amendments to portions of the HON that subparts U and JJJ reference.

Those HON amendments that are incorporated by reference into subparts U and JJJ are considered to apply to subpart U and JJJ affected sources. In addition, should the EPA propose future amendments to the HON or other regulations cross-referenced in subparts U and JJJ (e.g., the NESHAP for Source Categories: General Provisions, 40 CFR part 63, subpart A), the most recent, promulgated versions of those rules will be considered to apply subpart U and JJJ affected sources whenever subpart U and JJJ directly cross-reference those regulations. Public comments should be submitted at the time of the proposal of any such amendments, if owners or operators have concerns about how those amendments may affect the application of subparts U and JJJ to their sources.

On November 4, 1996 the Dow Chemical Company (''Dow'') filed petitions for review of the promulgated Polymers and Resins I and IV NESHAP in the U.S. Court of Appeals for the District of Columbia Circuit, *The Dow Chemical Company* v. *EPA*, 96–1417 and 96–1421 (D.C. Cir.). Dow raised over 280 technical issues on the rules' structure and applicability, including questions about the applicability of the HON amendments to subparts U and JJJ. Issues were raised regarding details of the technical requirements, drafting clarity, and structural errors in the drafting of certain sections of the rules. In addition, on December 6, 1996, the Union Carbide Corporation filed a petition for review of the promulgated Polymers and Resins I NESHAP in the U.S. Court of Appeals for the District of Columbia Circuit, *Union Carbide Corporation* v. *EPA*, 96–1413 and Consolidated Cases (D.C. Cir.). Today's proposed amendments address the issues raised by Dow on the promulgated Polymers and Resins I and IV NESHAP, and the issues raised by Union Carbide on the promulgated Polymers and Resins I NESHAP, and include corrections and clarifications to ensure that these rules are implemented as intended. Today's proposed amendments also provide some new provisions that would reduce the burden associated with the recordkeeping and reporting requirements of these rules. For example, as proposed §§ 63.506(a)(1) and (a)(2) and 63.1335(a)(1) and (a)(2) allow records older than 6 months to be stored off-site, and no longer require owners and operators to keep copies of reports that have already been submitted to the EPA Regional Office. This last change is being proposed so that owners and operators that have misplaced copies of reports that have also been submitted to the EPA are not considered to be in violation of the rules.

II. Regulatory Amendments

This section of this preamble will first present a general overview of the types of changes that the EPA is proposing to make to subparts JJJ and U. Following that overview, a section-by-section approach has been taken, describing the EPA's proposed changes, down to the subparagraph level, where deemed appropriate. Parallel sections in subparts U and JJJ (e.g., §§ 63.480 and 63.1310) are first addressed together, and then proposed changes that are unique to one rule or the other are described, for each section of the rules, as necessary.

A. Overview of Proposed Changes

1. HON Changes Directly Incorporated

As mentioned previously, on January 17, 1997 (62 FR 2722), the EPA promulgated revisions to the HON rule. Those revisions to the HON made significant changes to the requirements for process wastewater, heat exchange systems, certain liquid streams in open systems within a chemical manufacturing process unit, and maintenance wastewater, and made minor edits to other sections of the rule. For those HON provisions directly referenced in subparts U and JJJ (see Table 1), the promulgated HON amendments also apply to affected Polymers and Resins I and IV sources. The EPA has evaluated the HON amendments and has determined, with the proposed exceptions noted in this action, that the HON amendments are appropriate for Polymers and Resins I and IV sources. The EPA therefore proposes that the HON amendments be incorporated into the Polymers and Resins I and IV rules, with the exceptions proposed in this notice. For more detailed rationale regarding the HON amendments, see the preamble in the **Federal Register** notice that proposed the HON amendments (61 FR 43698, August 26, 1996).

TABLE 1.—HON SECTIONS DIRECTLY REFERENCED IN SUBPARTS U AND JJJ

HON section referenced	Description of referenced provisions	Subpart U section that references HON	Subpart JJJ section that references HON
§§ 63.101, 63.111, & 63.161	Definitions	§ 63.482(a)	§ 63.1312(a)
§ 63.104	Heat Exchange Systems	§ 63.502(k)	§ 63.1328
§ 63.105	Maintenance Wastewater	§ 63.501	§ 63.1330
§§ 63.113–118	Process Vents	§ 63.485	§ 63.1315
§§ 63.119–123	Storage Vessels	§ 63.484	§ 63.1314
§§ 63.131–149	Wastewater	§ 63.501	§ 63.1330
§ 63.150(g)(3), (g)(5), (h)(3), & (h)(5).	Emissions Averaging provisions for storage vessels & wastewater.	§ 63.503(g)(3), (g)(5), (h)(3), & (h)(5).	§ 63.1332(g)(4), (g)(5), (h)(4), & (h)(5)
§§ 63.160–182	Equipment Leaks	§ 63.502(a)-(j)	§ 63.1331

2. Changes to P&R Sections That Were Modeled After the HON

For the same reason that, after thorough evaluation, the EPA had originally chosen to model subparts U and JJJ after the HON (i.e., due to the similarities in HAP emissions and emission controls amongst HON affected sources and affected elastomers and thermoplastics sources; see the proposal preambles for subparts U and JJJ, 60 FR 30801, 6/12/95, and 60 FR 16090, 3/29/95, respectively), the EPA is proposing amendments to subparts U and JJJ which will make parallel changes to these rules based on the HON amendments.

3. Litigation-Based Changes

As was mentioned in the ''Background'' section of this preamble, on November 4, 1996 the Dow Chemical Company filed petitions for review of the promulgated Polymers and Resins I and IV NESHAP in the U.S. Court of Appeals for the District of Columbia Circuit, *The Dow Chemical Company* v *EPA*, 96–1417 and 96–1421 (D.C. Cir.); and on December 6, 1996, the Union Carbide Corporation filed a petition for review of the promulgated Polymers and Resins I NESHAP in the U.S. Court of Appeals for the District of Columbia Circuit, *Union Carbide Corporation* v *EPA*, 96–1413 and Consolidated Cases (D.C. Cir.). Many of today's proposed amendments address the technical issues and areas in need of clarification that were identified during the litigation settlement process.

4. Clarifyin and Cross-Referencing Changes

Many clarifying and cross-referencing changes were needed in subparts U and JJJ, partly as a result of the previously discussed amendments to the HON (because those amendments included both terminology changes and changes in the location of specific provisions).

In particular, the wastewater provisions in both subparts U and JJJ required a substantial number of changes, in order to smoothly incorporate the numerous changes to the wastewater provisions in the HON. Similar changes were necessary in the other sections of the rule that directly reference HON provisions (e.g., §§ 63.485 and 63.1315).

In addition, a ''snowball'' effect inevitably occurred as other provisions in subparts U and JJJ were amended, requiring additional cross-reference changes and updates throughout both rules. For the most part, these cross-reference changes need little or no explanation. A few of the cross-reference changes are corrections of errors that occurred at promulgation.

Additional changes are being proposed for the sake of clarity and specificity throughout both rules. For example, in several places, the promulgated language implied that inanimate objects (e.g., equipment) would have to follow the rule provisions. In these proposed amendments, the EPA has made an effort to correct this problem throughout both rules, by always stating that it is the ''owner or operator'' (and not the equipment) that must follow the rule provisions.

In the promulgated version of subpart U, in particular, there were also several places in which an appendix to a 40 CFR part 60 or 63 subpart was referenced, without the complete citation being given. The EPA proposes to correct all such instances in these amendments, as well. Grammatical corrections (such as changing ''can'' to ''may,'' where appropriate) are also being proposed in these amendments. Other minor, global changes include:

- Changing the term ''control device'' to ''halogen reduction device,'' where necessary.
- Changing ''must'' to ''shall,'' for the sake of consistency throughout both rules.

The following sections describe the proposed changes to each section of subparts U and JJJ for which amendments are being considered. Changes that are being made to both subparts U and JJJ are described in unison.

B. Applicability— Proposed Changes to §§ 63.480 and 63.1310

1. Changes Common to Polymers and Resins I and IV

Sections 63.480(a)(1) through (4) and 63.1310(a)(1) through (4). The EPA is proposing to restructure these paragraphs in order to provide a better description of what constitutes an ''affected source,'' an ''existing affected source,'' and a ''new affected source.'' The EPA is proposing to add a sentence to the end of §§ 63.480(a)(3) and

63.1310(a)(3), clarifying that §§ 63.480(a)(3)(i) and 63.1310(a)(3)(i) exclusively describe ''brand new'' production sites (i.e., ''greenfield'' sites). If a source meets the criteria for a new source under §§ 63.480(a)(3)(ii) or (iii), or 63.1310(a)(3)(ii) or (iii), or §§ 63.480(i) or 63.1310(i) (which deal with changes or additions at existing plant (i.e., industrial) sites), then §§ 63.480(a)(3)(i) and 63.1310(a)(3)(i) do *not* apply to that source. The proposed new paragraphs at §§ 63.480(a)(4) and 63.1310(a)(4) replace the promulgated paragraph (a)(2), and list emission points and equipment besides elastomer product process units (EPPU) and thermoplastic product process units (TPPU) (e.g., compliance equipment and waste management units) that make up the affected source, in an attempt to clarify that these emission points are part of the affected source *in addition to* the EPPU/TPPUs (which are clearly part of the affected source.) A reference to the proposed equipment list in §§ 63.480(a)(4) or 63.1310(a)(4) has also been added to proposed paragraphs §§ 63.480(a)(2) and (3), and 63.1310(a)(2) and (3), and in other places throughout subparts U and JJJ, where such a reference was determined to be helpful. The EPA is also requesting comments on the idea of incorporating similar changes into §§ 63.1420(a) of subpart PPP, the Polyether Polyols Production NESHAP.

Sections 63.480(a)(3)(i) and 63.1310(a)(3)(i). The proposed language in §§ 63.480(a)(3)(i) and 63.1310(a)(3)(i) clarify that the phrase ''on which construction commenced after June 12, 1995 (or March 29, 1995, for subpart JJJ)'' applies to the entire major source, as opposed to applying to ''each group of one or more EPPU (TPPU)''. The fact that the equipment associated with each EPPU/TPPU is also considered to be part of the affected source is also clarified in these paragraphs.

In addition, the parenthetical ''i.e., a greenfield site'' is meant to clarify that these paragraphs apply to sites at which no industrial activity (demonstrated by an absence of any HAP emission points) occurred prior to the proposal dates of the respective rules. The term ''emission point'' is defined in §§ 63.482(b) and 63.1312(b).

Sections 63.480(a)(5) and 63.1310(a)(5). The EPA is proposing to add paragraphs (§§ 63.480(a)(5) and 63.1310(a)(5)) explicitly stating that area sources and equipment at area sources are not considered to be affected sources under subpart U or JJJ. Although this was implied in the promulgated rule (by only listing EPPUs/TPPUs at ''major source'' plant sites as making up an affected source), the EPA believes that an explicit statement of this nature helps clarify the applicability of this rule.

Sections 63.480(b) and 63.1310(b). One of the many revisions to subparts U and JJJ that are being proposed with today's action that will reduce the recordkeeping burden on owners and operators is contained in these paragraphs. The EPA is proposing to include an additional alternative for EPPUs and TPPUs that do not use or manufacture any organic HAP, which would provide those owners and operators with the choice of either keeping records documenting the fact that their source does not use or manufacture any organic HAP, or of providing such information to the Administrator, at the Administrator's request. The EPA is proposing to provide this alternative, which is similar to that included in the HON amendments to § 63.103(e), because it was never the EPA's intent to impose an ongoing recordkeeping requirement on sources that neither use nor manufacture any organic HAP.

Sections 63.480(c) and 63.1310(c). The EPA is proposing to amend these paragraphs to clarify which equipment is included within the scope of these rules. The promulgated language in §§ 63.480(c) and 63.1310(c) caused confusion and raised concerns over whether other equipment or activities not listed were included in the affected source.

The proposed revisions reflect the promulgated amendments to § 63.100(f) (after which they were originally modeled) and are intended to improve rule clarity by reversing the drafting structure to state that the listed items are included in the affected source, but are not subject to the control requirements of the rule. Based on discussions with industry, the EPA determined that reversing the structure would make these paragraphs more understandable to the regulated community and would reduce the chance of incorrect interpretation. This proposed change is intended to ensure that certain equipment that is part of a subpart U or JJJ affected source does not become covered by future Section 112(j) rules.

Other proposed changes to §§ 63.480(c) and 63.1310(c) include a sentence clarifying that these excluded emission points are not subject to subpart A of part 63 (the General Provisions). The proposed changes to §§ 63.480(c) and 63.1310(c) also add the following equipment to the list of excluded emission points: equipment that does not contain organic HAP, water from testing of deluge systems, and water from testing of firefighting systems.

Sections 63.480(f) and 63.1310(f): Primary product and applicability determination, and compliance options, for flexible operation units. The EPA is proposing extensive changes to the primary product determination and applicability criteria (i.e., for determining whether a process unit is an EPPU, a TPPU, or neither) and to the compliance options for flexible operation units in §§ 63.480(f) and 63.1310(f). These changes are summarized by Figures 1 through 4 in this document. However, Figures 1 through 4 are only intended to be illustrative, as they are not comprehensive, and they do not carry any regulatory authority. The proposed changes in §§ 63.480 and 63.1310 are intended to address concerns raised in litigation after the promulgation of subparts U and JJJ, with regard to flexible operation units, in particular. Various scenarios were presented to the EPA that would cause problems under the promulgated rule, such as ''contract manufacturing'' situations in which an owner or operator could not predict what might be produced at a source in the future. The EPA is also requesting comments on the idea of incorporating similar changes into § 63.1420(e) of subpart PPP, the Polyether Polyols Production NESHAP. The changes to § 63.1420(e) would primarily parallel those described below with regard to primary product determination and the flexible operation unit provisions.

Sections 63.480(f) and 63.1310(f). The EPA is proposing to revise these paragraphs so that they provide a more precise introduction to the paragraphs that follow, and in order to reflect the addition of new paragraphs as described below.

Sections 63.480(f)(1) and 63.1310(f)(1). The EPA is proposing to combine promulgated paragraphs §§ 63.480(f)(1), (f)(2), and (f)(3) and 63.1310(f)(1), (f)(2), and (f)(3) to create a single paragraph in each subpart that addresses the initial determination of the primary product. Promulgated paragraphs §§ 63.480(f)(1) and 63.1310(f)(1) appear as proposed paragraphs §§ 63.480(f)(1)(i) and 63.1310(f)(1)(i); promulgated paragraphs §§ 63.480(f)(2) and § 63.1310(f)(2) appear as proposed paragraphs §§ 63.480(f)(1)(iii) and 63.1310(f)(1)(iii); and promulgated paragraphs §§ 63.480(f)(3) and 63.1310(f)(3) appear as proposed paragraphs §§ 63.480(f)(1)(iv) and 63.1310(f)(1)(iv). The EPA is also proposing to add introductory text to §§ 63.480(f)(1) and

63.1310(f)(1), clarifying how the primary product of a process unit is determined, and clarifying that process units that neither use nor manufacture any organic HAP are only subject to §§ 63.480(b) or 63.1310(b) (see discussion above). The proposed requirements under §§ 63.480(f)(1) and 63.1310(f)(1) are illustrated in Figure 1 and Figure 2, which are flowcharts describing the proposed primary product/applicability determination procedures for existing sources and new sources, respectively.

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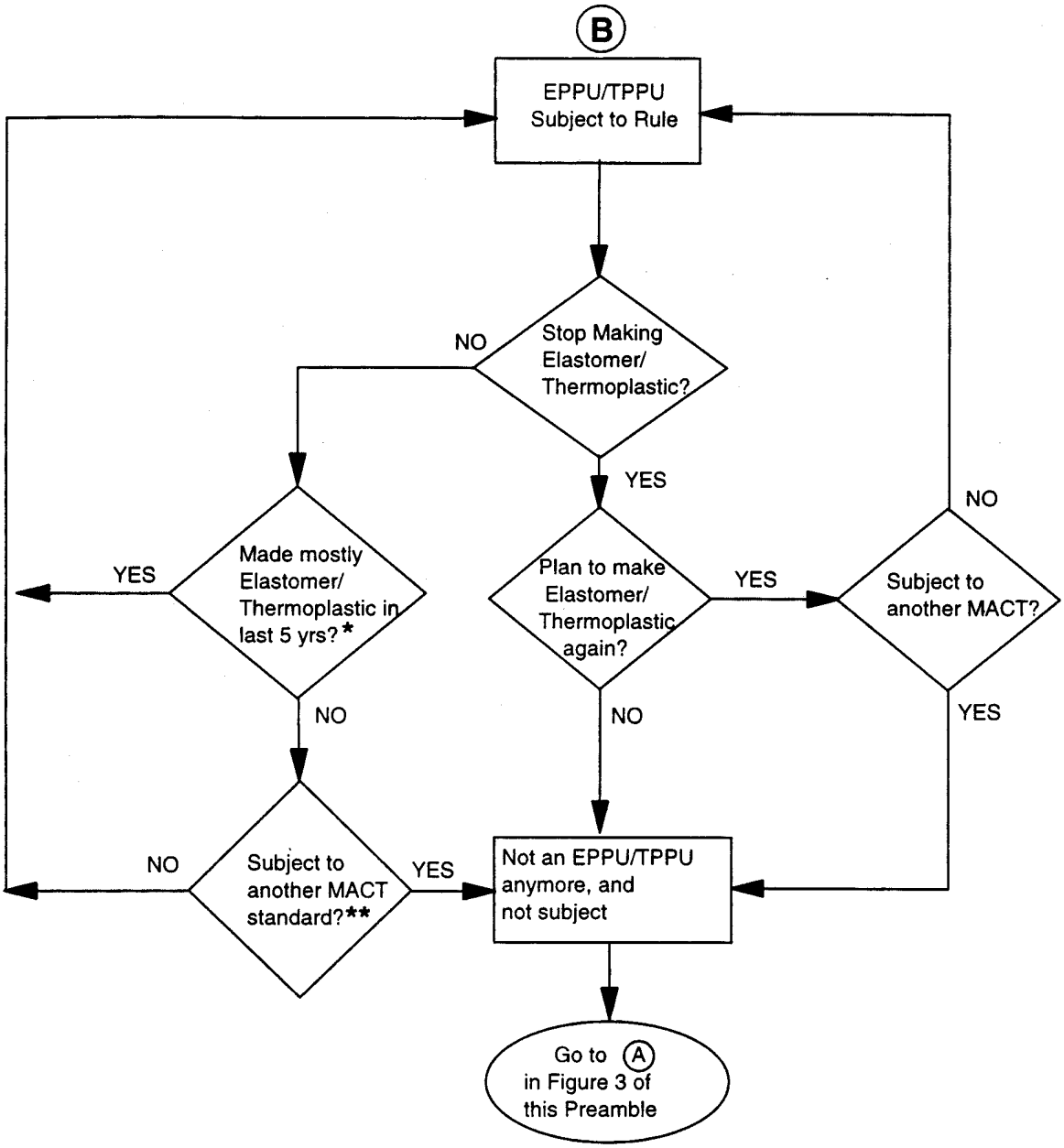
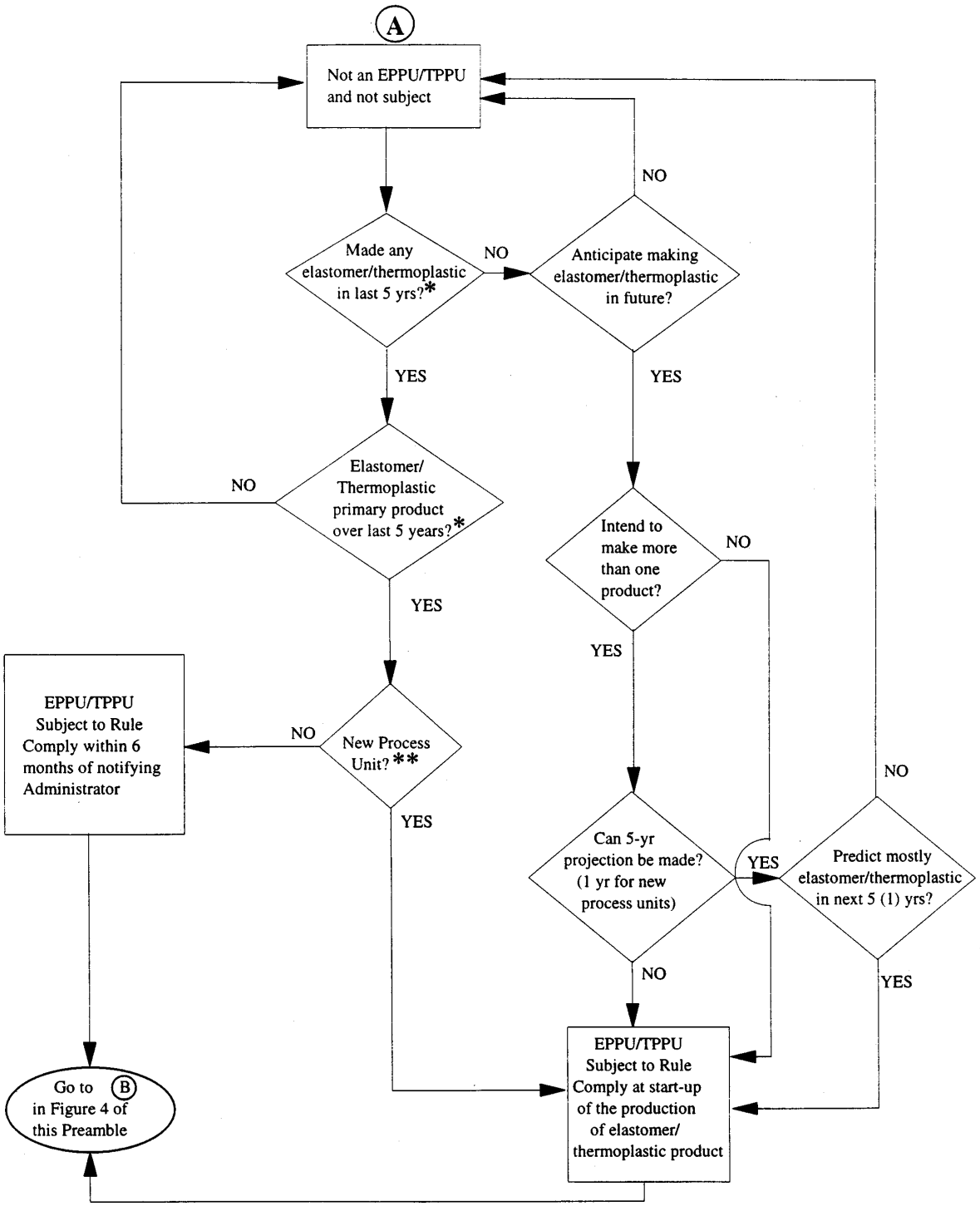


*Or since the unit began the production of any product, whichever is shorter.

**With the exception of 40 CFR 63, subpart GGG (Pharmaceutical MACT).

FIGURE 4. REDETERMINATION FOR EPPUs OR TPPUs SUBJECT TO PROPOSED SECTION 63.480(f)(10) OR 63.1310(f)(10)

(Beginning September 5, 2001 or September 12, 2001)



*Or since the unit began the production of any product, whichever is shorter.

**A new process unit is defined as a process unit that initially began production of any product after 9/5/96.

FIGURE 3. ANNUAL EVALUATION FOR NON-EPPUs OR NON-TPPUs THAT HAVE RECENTLY PRODUCED, OR MAY SOON PRODUCE, ELASTOMER OR THERMOPLASTIC PRODUCTS

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Sections 63.480(f)(1)(ii) and 63.1310(f)(1)(ii). A new set of requirements is being proposed under these paragraphs, which would deal with process units that are designed to produce two or more products at the same time. This situation was not addressed at promulgation of these rules. Under the proposed requirement, the primary product is the product for which the process unit has the greatest annual design capacity on a mass basis. If the process unit has the same annual design capacity on a mass basis for two or more products, and at least one of those products is an elastomer/thermoplastic product, then the primary product for that process unit is an elastomer/thermoplastic product.

Sections 63.480(f)(1)(iii) and 63.1310(f)(1)(iii). These proposed paragraphs address primary product determination for flexible operation units, which was previously addressed in promulgated paragraphs §§ 63.480(f)(2) and 63.1310(f)(2). The EPA is proposing to add criteria for determining the primary product for an existing process unit and for a new process unit (definitions for the terms ''existing process unit'' and ''new process unit'' are also being proposed to be added to §§ 63.482(b) and 63.1312(b)). At promulgation, whether the source was new or existing, the owner or operator had to determine primary product on 5 years of ''expected production.'' However, in recognition of the fact that it might be difficult for some owners or operators to predict that far into the future, the proposed amendments only require owners and operators to look one year into the future for new process units. The EPA is also proposing to add a new provision at §§ 63.480(f)(2) and 63.1310(f)(2) for owners or operators of either new or existing flexible operation units for which production cannot be predicted over the required time period (see further discussion below on §§ 63.480(f)(2) and 63.1310(f)(2)).

Sections 63.480(f)(1)(iv) and 63.1310(f)(1)(iv). These proposed paragraphs discuss the consequences of determining that a process unit's primary product is an elastomer/thermoplastic product (as previously addressed in promulgated paragraphs §§ 63.480(f)(3) and 63.1310(f)(3)). In these paragraphs and in several other places throughout the proposed amendments to subparts U and JJJ, the EPA has qualified the term EPPU/TPPU with ''and associated equipment,'' which is listed in §§ 63.480(a)(4) (or 63.1310(a)(4)). This clarification is being proposed because there was some confusion over the difference between an affected source and an EPPU/TPPU after promulgation. In addition, the EPA is proposing changes to this paragraph that remove references to ''the future,'' because other provisions have been added at §§ 63.480(f)(3), (4), (9), and (10), and at 63.1310(f)(3), (4), (9), and (10) that explain more explicitly how the designation of a process unit as an EPPU/TPPU can be removed or re-instated.

Sections 63.480(f)(2) and 63.1310(f)(2). As mentioned earlier, the EPA is proposing the addition of provisions for owners or operators that are not able to predict future production to the extent that is necessary to determine the primary product of a flexible operation unit under §§ 63.480(f)(1)(iii) and 63.1310(f)(1)(iii). Under these proposed provisions, if the owner or operator cannot predict what product will be the primary product of the flexible operation unit for the designated time period, but can predict that the primary product will not be an elastomer/thermoplastic product, the flexible operation unit is designated as not being an EPPU/TPPU.

A more complex solution was necessary for owners and operators of flexible operation units who can neither predict the primary product for the designated time period, nor predict that the primary product will not be an elastomer/thermoplastic product. The proposed provisions under §§ 63.480(f)(2)(ii) and 63.1310(f)(2)(ii) address this situation. According to the proposed provisions in §§ 63.480(f)(2)(ii) and 63.1310(f)(2)(ii), in the situation described above, a flexible operation unit that is an existing process unit will be designated an EPPU/TPPU if an elastomer/thermoplastic product has been produced for *five percent (or greater)* of the time since March 9, 1999. If the flexible operation unit is a new process unit, the flexible operation unit will be designated as an EPPU/TPPU if the owner or operator anticipates that an elastomer/thermoplastic product will be produced in that flexible operation unit at any time during the first year of operation of the new process unit.

This concept, of making the primary product determination based on whether or not an elastomer or thermoplastic has been produced at least 5 percent of the time since March 9, 1999 for an existing process unit for which the owner or operator cannot otherwise determine the primary product, or on whether or not the owner or operator anticipates producing any elastomer or thermoplastic products during the first year of production at a new process unit for which the owner or operator cannot otherwise determine the primary product, is a new one. The EPA is particularly interested in receiving public comments on this concept, as a way of handling flexible operation units for which the primary product determination is difficult to make.

Sections 63.480(f)(3) and 63.1310(f)(3). These proposed paragraphs, and proposed paragraphs §§ 63.480(f)(4) and 63.1310(f)(4), reflect the concepts originally promulgated as paragraphs §§ 63.480 (f)(4)(i) through (f)(4)(iii) and 63.1310 (f)(4)(i) and (f)(4)(iii). The original concepts have been modified to improve clarity and to complement other additions proposed for §§ 63.480(f) and 63.1310(f). In order to allow the flexibility that these proposed amendments are offering, as far as whether or not the owner or operator designates their flexible operation unit to be an EPPU/TPPU, the EPA is proposing to add paragraphs that will specify procedures for an annual applicability determination (beginning in September of the year 2001) for non-EPPU's/non-TPPU's that have produced an elastomer/thermoplastic product at any time in the preceding 5-year period or since the date that the unit began production of any product, whichever is shorter. Figure 3 depicts the proposed annual evaluation (after September 2001) for owners or operators of non-EPPUs or non-TPPUs that have recently made an elastomer or thermoplastic product, or are planning to make elastomer or thermoplastic products in the near future. The proposed method for performing this annual applicability determination requires the owner or operator to calculate the percentage of total operating time over which each product that was produced at the flexible operation unit was produced during the applicable time period. If an elastomer/thermoplastic product was the product with the highest percentage of total operating time over that period, then the flexible operation unit is designated as an EPPU/TPPU.

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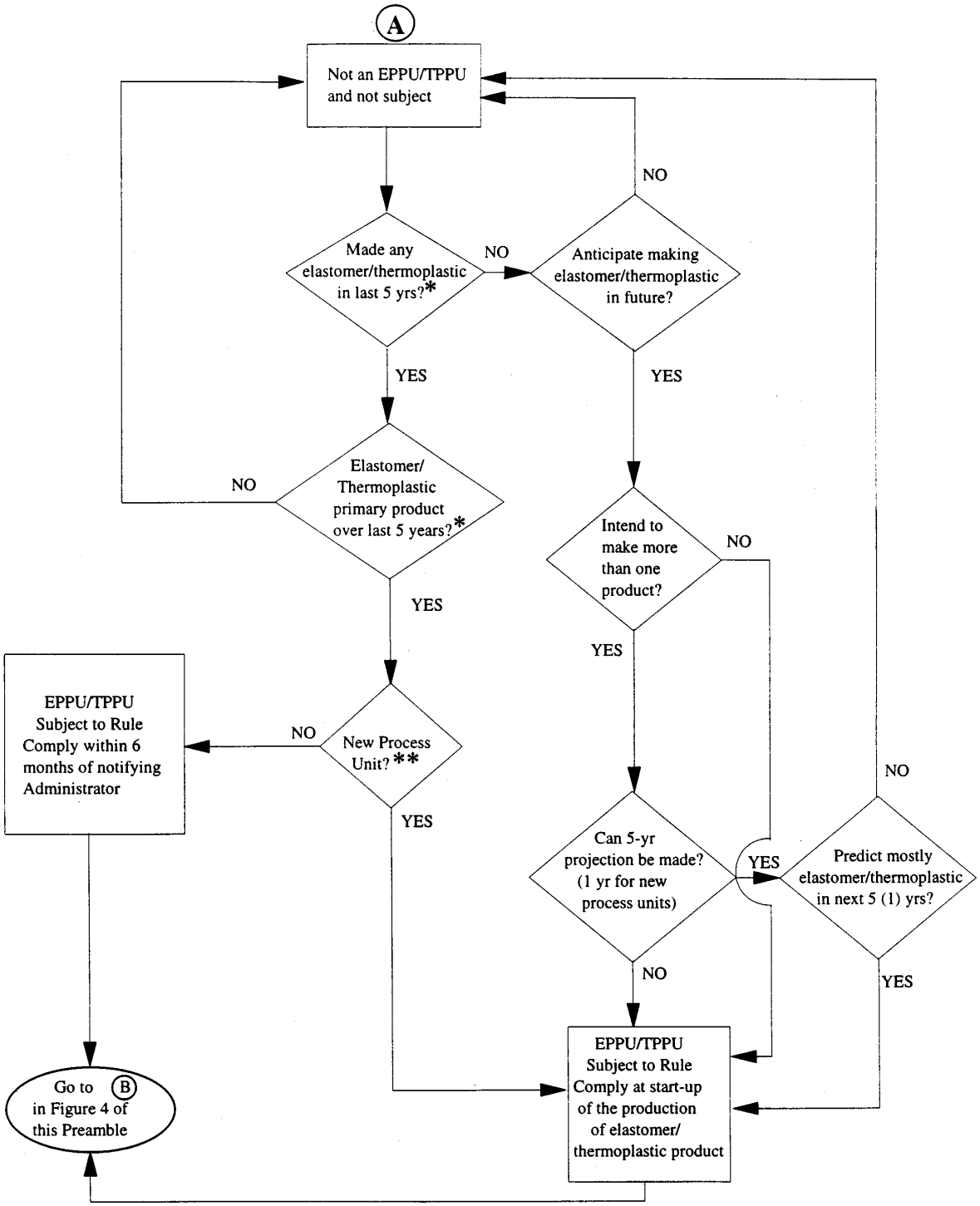
(Beginning September 5, 2001 or September 12, 2001)



*Or since the unit began the production of any product, whichever is shorter.

**A new process unit is defined as a process unit that initially began production of any product after 9/5/96.

FIGURE 3. ANNUAL EVALUATION FOR NON-EPPUs OR NON-TPPUs THAT HAVE RECENTLY PRODUCED, OR MAY SOON PRODUCE, ELASTOMER OR THERMOPLASTIC PRODUCTS

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Sections 63.480(f)(4) and 63.1310(f)(4). These proposed paragraphs, and proposed paragraphs §§ 63.480(f)(3) and 63.1310(f)(3), reflect the concepts originally promulgated as paragraphs §§ 63.480(f)(4)(i) through (f)(4)(iii) and 63.1310(f)(4)(i) and (f)(4)(iii). The original concepts have been modified to improve clarity and to complement other additions proposed for §§ 63.480(f) and 63.1310(f). These proposed paragraphs will pertain to owners or operators who are anticipating that their non-EPPU/TPPU process unit will begin manufacturing an elastomer/thermoplastic product in the near future, if the process unit has not produced any elastomer/thermoplastic products in the previous five-year period. These paragraphs will also pertain to process units for which the owner or operator has removed the EPPU/TPPU designation in accordance with proposed §§ 63.480(f)(9) or 63.1310(f)(9), but for which the owner or operator now anticipates future production of an elastomer/thermoplastic product. This proposed provision requires the owner or operator, in the situations described above, to redetermine the primary product for the process unit using the approach outlined in §§ 63.480(f)(1) and (f)(2) and 63.1310(f)(1) and (f)(2), except that, for flexible operation units, the owner or operator must base the prediction on the anticipated production for the five years (one year, for new process units) following the date that production of an elastomer/thermoplastic product will be initiated (instead of basing it on the period following September 5th (September 12th for subpart JJJ) of 1996, or on the period following the initiation of the production of any product).

Sections 63.480(f)(5) and 63.1310(f)(5). This proposed paragraph specifies that owners and operators of flexible operation units that are EPPU/TPPU's shall comply with subpart U or JJJ (as appropriate) for their primary product. Proposed §§ 63.480(f)(5)(i) and (f)(5)(ii) and 63.1310(f)(5)(i) and (f)(5)(ii) offer two exceptions to this requirement: (1) if no organic HAP are used in the manufacture of a particular product, only the provisions in §§ 63.480(b) and 63.1310(b) must be followed during the production of that product; and (2) if a product becomes subject to the National Emissions Standards for Pharmaceuticals (subpart GGG of part 63), the owner or operator need not comply with the provisions of this subpart during the manufacture of that product.

Sections 63.480(f)(6) and 63.1310(f)(6). These proposed paragraphs reflect the concepts originally promulgated as paragraphs §§ 63.480(f)(5)(i) and (f)(5)(ii) and 63.1310(f)(5)(i) and (f)(5)(ii). For flexible operation units, the group status of each emission point (except batch process vents) may be calculated in one of two ways, according to the proposed amendments in §§ 63.480(f)(6) and 63.1310(f)(6). The owner or operator has the option of (1) determining the group status for each emission point based on emission point characteristics when the primary product is being produced, or (2) determining the group status for each emission point based on emission point characteristics when each product produced by the flexible operation unit is being produced.

Sections 63.480(f)(7) and 63.1310(f)(7). The proposed provisions added as §§ 63.480(f)(7) and 63.1310(f)(7) state the requirements for setting parameter monitoring levels for flexible operation units. The proposed amendments allow owners and operators to either establish separate parameter monitoring levels for each product, or to establish a single parameter monitoring level (for each parameter required to be monitored at each device subject to monitoring requirements) for all products, depending on which option was chosen under §§ 63.480(f)(6) or 63.1310(f)(6), for conducting the group determination.

Sections 63.480(f)(8) and 63.1310(f)(8). The proposed provisions in §§ 63.480(f)(8) and 63.1310(f)(8) are largely similar to the promulgated provisions in §§ 63.480(f)(6) and 63.1310(f)(6), except that one promulgated requirement (§§ 63.480(f)(6)(ii)(B) and 63.1310(f)(6)(ii)(B)) was deleted. The deleted requirement was the requirement that the operating time and/or production mass for each product that was used to determine the primary product be reported in the Notification of Compliance Status. The EPA decided that this information was not needed in the Notification of Compliance Status; however, records of this data should be kept in accordance with §§ 63.506(a) and 63.1335(a). In addition, proposed paragraphs §§ 63.480(f)(8)(ii)(C) and (f)(8)(ii)(D) and 63.1310(f)(8)(ii)(C) and (f)(8)(ii)(D) were added, requiring the submittal of information regarding the parameter monitoring levels established according to §§ 63.480(f)(7) and 63.1310(f)(7) in the Notification of Compliance Status, because the EPA determined that this information would be needed in the Notification of Compliance Status.

Sections 63.480(f)(9) and 63.1310(f)(9). In the promulgated rule, procedures were provided for removing the EPPU/TPPU designation from a process unit in which the owner or operator has ceased making all elastomer/thermoplastic products, and in which the owner or operator does not anticipate the production of an elastomer/thermoplastic product in the future (in promulgated §§ 63.480(f)(3)(i) and 63.1310(f)(3)(i)). These provisions have been rewritten for clarity and moved to §§ 63.480(f)(9) and 63.1310(f)(9) in the proposed amendments.

Sections 63.480(f)(10) and 63.1310(f)(10). Because 40 CFR part 63 standards are developed using industry-specific considerations, the regulations often contain requirements tailored specifically to the particular processes used in the regulated industry. The primary product applicability approach is one used in many MACT standards to ensure that the process unit is only subject to one MACT standard, and that the standard to which it is subject is the one for the product that is produced in the process unit most of the time. If the production pattern changes and the process unit begins producing another product for the majority of the time, and the new primary product is subject to another MACT standard, the EPA believes it is appropriate that the unit be subject to the other MACT standard, rather than being subject to subpart U or JJJ.

Therefore, the EPA is proposing to add §§ 63.480(f)(10) and 63.1310(f)(10), which require the owner or operator to conduct a redetermination of applicability of these rules to a flexible operation unit ''whenever changes in production occur that could reasonably be expected to change the primary product'' from an elastomer or thermoplastic product to a product that would make the process unit subject to another subpart of part 63. Figure 4 illustrates the redetermination process for EPPUs or TPPUs that have made ''changes in production * * * that could reasonably be expected to change the primary product.''

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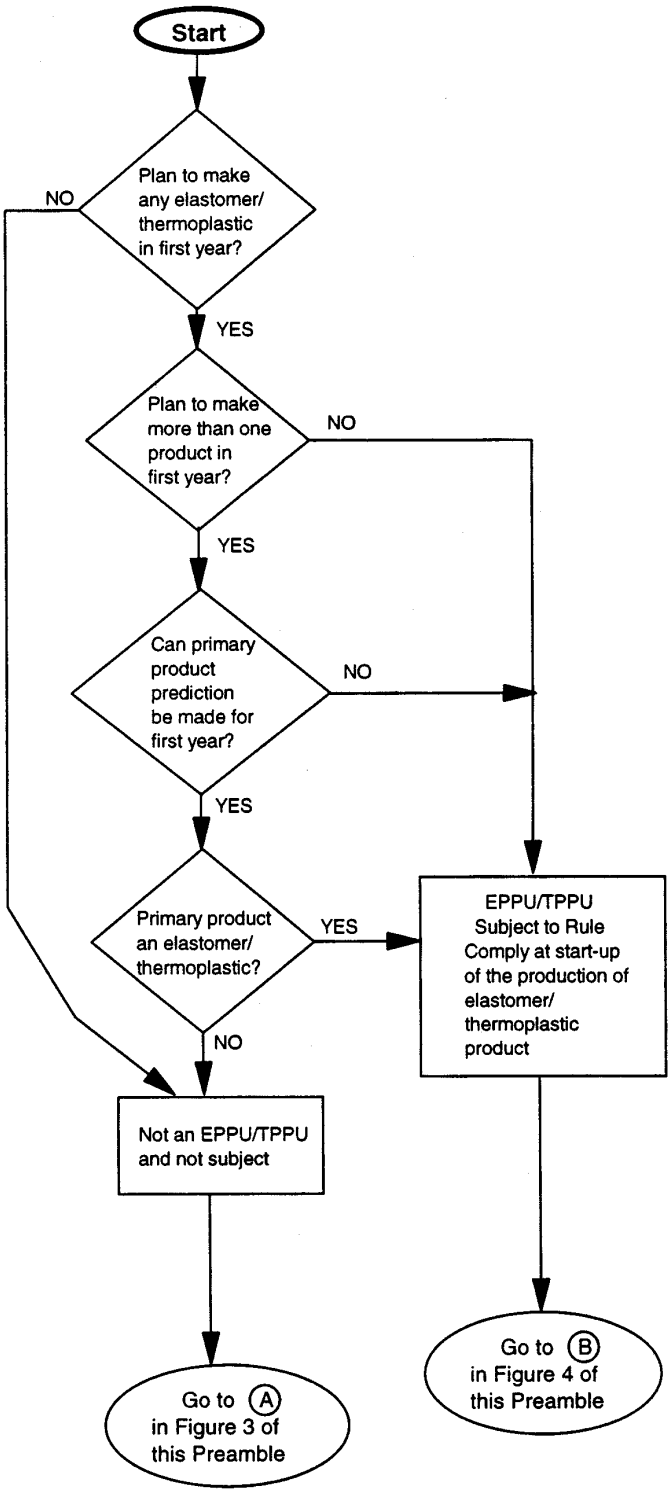

FIGURE 2. NEW SOURCE INITIAL DETERMINATION

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This redetermination of applicability is based on the ''primary product'' of the flexible operation unit being the ''product with the highest percentage of total operating time'' over the preceding five years, or since the process unit began producing any product, whichever is shorter. Given the length of time over which the primary product is determined for flexible operation units, the EPA believes that owners and operators will have ample time and opportunity to come into compliance with other NESHAP, should they become subject to other NESHAP as a result of the redetermination of primary product.

In addition, under the proposed provisions in §§ 63.480(f)(10)(iii) and 63.1310(f)(10)(iii), if a process unit (in which a elastomer/thermoplastic product is no longer the primary product, after a change in production) is subject to another subpart of part 63, that process unit remains designated as an EPPU or TPPU until the date upon which the process unit is required to be in compliance with the provisions of the other subpart to which it is subject.

Sections 63.480(g) and (h) and 63.1310(g) and (h): Storage Vessel Ownership and Recovery Operations Equipment Ownership. The EPA is proposing clarifying changes to make the wording and structure of these paragraphs parallel, because the EPA believes that this will make the provisions of each clearer and easier to follow. Specifically, the proposed revisions would make the wording of §§ 63.480(g)(6) and (g)(8) and 63.1310(g)(6) and (g)(8); and §§ 63.480(h)(6) and (h)(7) and 63.1310(h)(6) and (h)(7) parallel, respectively. This change is similar to the HON amendments to § 63.100(g), (h), and (i).

In addition, one of the conditions under which an owner or operator would have to re-determine the assignment of a particular storage vessel has been removed. The rule no longer requires that an assignment redetermination be performed whenever ''there is a change in the use of the storage vessel that could reasonably be expected to change the predominant use of that storage vessel.'' It is the EPA's position that it is not necessary to require a storage vessel assignment redetermination unless the storage vessel has begun receiving material from (or sending material to) a process unit that was not included in the initial determination, or has ceased to receive material from (or send material to) a process unit that was included in the initial determination. Unless one of the above-listed circumstances has occurred, it is highly unlikely that the assignment of a storage vessel to a particular process unit will have become inappropriate.

Sections 63.480(i) and 63.1310(i). The EPA is proposing a number of changes in §§ 63.480(i) and 63.1310(i). The most significant changes clarify the requirements that apply to additions of entire process units and individual emission points, and clarify the compliance dates for newly subject process units or equipment. In addition, other changes are being proposed to clarify what the EPA considers to be ''process changes,'' and to clarify the recordkeeping and reporting requirements associated with a process change.

Sections 63.480(i)(1)(i) and (ii) and 63.1310(i)(1)(i) and (ii). These revisions are being proposed because the promulgated drafting and structure in §§ 63.480(i) and 63.1310(i) caused confusion as to the equipment that would be subject to the new source requirements if the conditions in either §§ 63.480(i)(1)(i) or (ii) or 63.1310(i)(1)(i) or (ii) were met. Before discussing the specific changes, an explanation is needed regarding a fundamental basis of these provisions. It is not possible for a single affected source to be both subject to new source requirements (for any portion of the affected source) and to existing source requirements (for any other portion of the affected source). An affected source must be either a new affected source, with all of it's equipment subject to the new source requirements, or it must be an existing affected source, with all of it's equipment subject to the existing source requirements. The proposed changes to §§ 63.480(i)(1)(i) and (ii) and 63.1310(i)(1)(i) and (ii) are intended to clarify this situation.

First, the EPA is proposing to amend these paragraphs to clarify that a group of one or more newly added EPPU/TPPUs (making the same primary product), including their associated equipment, constitute a single ''addition'' to a plant site. In §§ 63.480(i)(1)(i) and 63.1310(i)(1)(i), the proposed languages makes it clear that the group of EPPU/TPPUs (and associated equipment) are a new affected source, provided that the applicable criteria are met. The applicable criteria consist of two separate ''sets'' of conditions, and one condition from each set must be met in order for the group of EPPU/TPPUs and their associated equipment to be considered a new source. The first set, contained in paragraphs §§ 63.480(i)(1)(i)(A) and (B) and 63.1310(i)(1)(i)(A) and (B), are related to the date of construction or reconstruction. If the construction of the group of EPPU/TPPUs commenced after June 12, 1995, then the condition in paragraph (A) would be met. If a group of one or more process units was originally constructed or reconstructed after June 12, 1995 (under subpart U) or after March 29, 1995 (under subpart JJJ), and then later began the production of an elastomer/thermoplastic product and became an EPPU/TPPU, then the condition in paragraph (B) would be met. This is a clarification from the promulgated requirements, which only addressed the date of the construction of the ''addition.'' The only proposed changes to the second set of criteria, which are contained in paragraphs §§ 63.480(i)(1)(i)(C) and (D) and 63.1310(i)(1)(i)(C) and (D), are related to the clarification what constitutes an ''addition,'' as discussed above.

The proposed amendments to §§ 63.480(i)(1)(ii) and 63.1310(i)(1)(ii) include the same changes described above for §§ 63.480(i)(1)(i) and 63.1310(i)(1)(i) related to the clarification of the ''addition.'' In addition, a new provision is being added to paragraphs §§ 63.480(i)(1)(ii) and 63.1310(i)(1)(ii) to specify the compliance date for a group of process units that have become EPPU/TPPUs due to a change in production that has made an elastomer/thermoplastic product the primary product of the process unit. In the proposed paragraphs §§ 63.480(f)(3) and 63.1310(f)(3), owners or operators of flexible operation units that are not EPPUs or TPPUs, but that continue to produce an elastomer/thermoplastic product are required to annually conduct a primary product determination based on historical production levels. If production has shifted such that an elastomer/thermoplastic product has become the primary product of a flexible operation unit, then the unit is designated an EPPU/TPPU and proposed §§ 63.480(f)(3)(iii) and 63.1310(f)(3)(iii) require that the owner or operator notify the EPA of this re-designation within 45 days of making the determination. The new provisions in §§ 63.480(i)(1)(ii) and 63.1310(i)(1)(ii) specify that owners or operators in the situation described above must be in compliance with the existing source requirements within 6 months from the date of the notification.

Sections 63.480(i)(2) and 63.1310(i)(2). Similar changes are being proposed for these paragraphs as those described above for §§ 63.480(i)(1) and 63.1310(i)(1). In §§ 63.480(i)(2)(i)(A) and 63.1310(i)(2)(i)(A), rather than referring to the definition of ''reconstruction'' in

subpart A, the proposed text refers to a newly proposed definition of ''reconstruction,'' in §§ 63.482(b) and 63.1312(b). The EPA is also proposing to clarify, in §§ 63.480(i)(2)(ii) and 63.1310(i)(2)(ii), that the compliance dates are July 31, 1997 for most equipment leaks and September 5, 1999 for most other emission points under subpart U, and are February 27, 1998 for most equipment leaks and September 12, 1999 for most other emission points under subpart JJJ. Please note that, as mentioned earlier, the compliance date for equipment leaks at PET affected sources was temporarily extended to no later than September 12, 1999 (62 FR 30993, June 6, 1997). Specifying the compliance dates in §§ 63.480(i)(2)(ii) and 63.1310(i)(2)(ii) eliminates the need for the promulgated paragraphs under §§ 63.480(i)(2)(iii) and 63.1310(i)(2)(iii). The EPA is proposing to remove these paragraphs and their subparagraphs, which specify requirements for submitting ''compliance schedules.'' The EPA believes that the requirement to create and submit compliance schedules is not necessary under subparts U and JJJ. Provided that the existing source is in compliance with the applicable requirements in subpart U or JJJ on the compliance date, the EPA has no need to know in advance how the owner or operator foresees bringing the existing affected source into compliance by the appropriate date. The burden is on the owner or operator to have a compliance plan that will guarantee that their source will be in compliance by the date given in subpart U or JJJ, for a particular emission point.

Promulgated §§ 63.480(i)(3) and 63.1310(i)(3). The EPA is proposing to remove the promulgated paragraphs §§ 63.480(i)(3) and 63.1310(i)(3), because it has been determined that §§ 63.480(i)(1) and (2) and 63.1310(i)(1) and (2) cover all possible scenarios (i.e., there is no way for a Group 2 emission point to become a Group 1 emission point without a process change or the addition of an EPPU/TPPU or emission point to the source.)

Sections 63.480(i)(5) and 63.1310(i)(5). The EPA is proposing a minor amendment to these paragraphs that would result in a decrease in burden on owners and operators. In these proposed amendments, a change in production capacity is only considered to be a ''process change'' if the change is an *increase* in production capacity.

Sections 63.480(i)(6) and 63.1310(i)(6). The proposed addition of these paragraphs will direct owners and operators to the newly proposed reporting requirements in §§ 63.506(e)(7)(v) and 63.1335(e)(7)(iv), which apply to additions and process changes. For the sake of completeness, the EPA is proposing to add an entire subparagraph describing the reporting requirements that apply to owners and operators as a result of both promulgated and proposed provisions in §§ 63.480(i)(1) and (i)(2) and 63.1310(i)(1) and (i)(2), at §§ 63.506(e)(7)(v) and 63.1335(e)(7)(iv), as will be discussed in greater detail in the section of this preamble that discusses proposed changes to §§ 63.506 and 63.1335.

Sections 63.480(j)(1) through (4) and 63.1310(j)(1) through (4). These proposed paragraphs contain the general operational requirements for compliance during periods of start-up, shutdown, malfunction, or non-operation of an affected source (or portion thereof). These proposed paragraphs largely mirror the promulgated HON paragraphs § 63.102(a)(1) through (4), with three primary exceptions.

First, the term ''emission limitation'' (as described in Section 302(k) of the Act) replaces the term ''provision'' throughout these proposed paragraphs. This proposed change addresses a concern on behalf of industry regarding exactly what the term ''provision'' covered (or, in other words, which regulatory requirements did *not* apply during periods of start-up, shutdown, malfunction, or non-operation.) The definition of ''emission limitation'' that is contained in section 302(k) of the Act is:

> A requirement * * * which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction and any design, equipment, work practice, or operational standard promulgated under the Act.

The EPA has determined that the term ''emission limitation,'' as defined under section 302(k) of the Act, is sufficiently broad to encompass any requirements that the owner or operator might need relief from, during a period of start-up, shutdown, malfunction, or non-operation.

Second, the fact that emission limitations do not apply during periods of start-up, shutdown, or malfunction is clearly spelled out in the proposed language in §§ 63.480(j)(1) and 63.1310(j)(1). The promulgated versions of subparts U and JJJ were not clear on this point.

Finally, proposed §§ 63.480(j)(3) and 63.1310(j)(3) clearly state the requirements for operating emissions control equipment and monitoring equipment during periods of start-up, shutdown, and malfunction. The promulgated rules and the HON were silent on the issue of monitoring during a start-up, shutdown, or malfunction, while these proposed amendments provide direct guidance on the control requirements and monitoring requirements during a period of start-up, shutdown, or malfunction.

These proposed amendments to subparts U and JJJ depart from the amended HON by specifically requiring monitoring during periods of start-up, shutdown, and malfunction. It is the EPA's position that requiring monitoring during these periods will provide the EPA with more information concerning whether or not Start-up, Shutdown, and Malfunction Plans were followed, and will provide the EPA with valuable information for assessing the adequacy of a source's Start-up, Shutdown, and Malfunction Plan for future situations.

The proposed paragraphs contain a provision allowing owners or operators to turn off monitoring equipment during start-up, shutdowns, or malfunctions, if the owner or operator can demonstrate that the monitoring equipment would be damaged or destroyed during those periods, as long as such a provision is included in the source's Start-up, Shutdown, and Malfunction Plan according to the procedures specified in the proposed requirements in §§ 63.506(b)(1), 63.1335(b)(1), 63.506(e)(3), and 63.1335(e)(3). The proposed procedures in §§ 63.506(b)(1) and 63.1335(b)(1) require that the owner or operator first submit a Precompliance Report or ''supplement to a Precompliance Report,'' demonstrating to the Administrator that the monitoring system would be damaged or destroyed if not shut off during a start-up, shutdown, or malfunction. This will allow the Administrator to have the opportunity to object to the inclusion of such a provision in the source's Start-up, Shutdown, and Malfunction Plan, if such a provision seems to be unwarranted or insufficiently supported in the Precompliance Report or supplement to the Precompliance Report. Under these proposed amendments, unless the Administrator objects to a request submitted in the Precompliance Report (or a supplement to the Precompliance Report) within 45 days of its receipt, that request will be deemed ''approved.''

2. Changes Unique to Polymers and Resins I

Section 63.480(d). In these proposed amendments, paragraphs (d)(2) and

(d)(3) in § 63.480 have been removed. The EPA believes that the provisions in § 63.480(d)(3) are not applicable to subpart U affected sources, because such facilities (i.e., solvent reclamation, recovery, or recycling operations at hazardous waste treatment, storage, and disposal facilities) are typically not co-located with EPPU. Those provisions were inadvertently incorporated with other HON provisions from § 63.100(j) into § 63.480(d) at promulgation. The EPA is also proposing to remove paragraph (d)(2), due to the fact that § 63.480(b) and (c)(1) (as proposed) address EPPUs and emission points not containing or using any organic HAP. With today's action, the EPA is requesting comments on the proposed removal of § 63.480(d)(2) and (d)(3) from subpart U.

Section 63.480(e). The EPA is proposing to edit paragraph (e) in § 63.480, to replace the incorrect references to ''subpart V'' with the correct references to subpart JJJ.

Proposed § 63.480(i)(3) and (i)(4). The EPA is proposing to amend the promulgated paragraph § 63.480(i)(4) (as § 63.480(i)(3) and (i)(4)), to specifically spell out to which emission points each applies (i.e., surge control vessels and bottoms receivers that become subject to § 63.170, or compressors that become subject to § 63.164). In § 63.480(i)(4), the EPA is also proposing to specifically refer to the compliance dates for compressors, as they are laid out in § 63.481(d).

3. Changes Unique to Polymers and Resins IV

Section 63.1310(e). The proposed language in this paragraph is intended to clarify that if only some emission points from a unit operation are regulated by another Maximum Achievable Control Technology (MACT) standard, then those particular emission points will remain subject to that other MACT standard. Therefore, instead of discussing ''unit operations,'' the proposed language discusses ''emission points from unit operations,'' so that there is no confusion over whether the emission points or the entire ''unit operation'' is subject to that other MACT standard.

Section 63.1310(i)(2)(ii). The EPA is proposing to add a condition to the list of circumstances that are considered to be ''process changes'' under § 63.1310(i)(2)(ii). The circumstance that the EPA is proposing to add in these amendments is a change resulting in baseline emissions from continuous process vents in the collection of material recovery sections at an existing affected source producing PET using a continuous dimethyl terephthalate process going from less than or equal to 0.12 kg organic HAP per Mg of product to greater than 0.12 kg of organic HAP per Mg of product. This proposed change in emission level is similar to changing from Group 2 to Group 1; it signifies that the owner or operator is now required to apply controls, so the EPA believes that adding this new condition to the list of circumstances that are considered to be ''process changes'' is appropriate.

Section 63.1310(i)(3). The EPA is proposing to change subpart JJJ so that surge control vessels and bottoms receivers are handled in the same manner for subpart JJJ, subpart U, and the HON. The EPA is proposing to consider surge control vessels and bottoms receivers to be subject to the requirements of subpart H of the HON, instead of considering them to be storage vessels and subject to the requirements in subpart G of the HON, as was done at promulgation of subpart JJJ. This proposed change would make subpart JJJ consistent with subpart U, with regard to how it handles surge control vessels and bottoms receivers, but it will not cause any change in the actual control requirements for surge control vessels and bottoms receivers. As a result, the EPA is proposing to add § 63.1310(i)(3), and to make other changes (to § 63.1312, in particular) as discussed elsewhere in this preamble.

Section 63.1310(i)(4). The EPA is proposing to clarify § 63.1310(i)(4) by referring specifically to compressors and by referring to the compliance dates for compressors in § 63.1311(d).

C. Compliance Dates and Relationship to Other Rules— Proposed Changes to § 63.481 and 63.1311

1. Changes Common to Polymers and Resins I and IV

It is anticipated that final action on the changes being proposed in today's document will occur shortly before the compliance dates for the non-equipment leak provisions of both subparts U and JJJ, as described in § 63.481 and 63.1311. The EPA believes that the changes proposed in today's action can generally be classified as changes to improve clarity and to increase flexibility in the testing, monitoring, reporting, and recordkeeping requirements in subparts U and JJJ. The EPA does not believe that these changes will cause a change in the compliance status of a facility. The EPA also does not believe that these amendments will effect major decisions that must be made by an owner or operator well in advance of the compliance date, such as whether a process is subject to the rule, or whether controls are required for an emission stream. Therefore, today's action does not include a proposed extension of the September 1999 compliance dates for existing sources.

However, while the EPA believes the proposed changes do not necessitate additional compliance time, the Agency recognizes that the possibility exists that there could be specific provisions in today's proposed changes that might effect the compliance status of one or more facilities. Nonetheless, the EPA is requesting comments on whether the proposed changes could place owners and operators in jeopardy of not being in compliance in September 1999, solely due to a proposed regulatory change. The EPA requests that commenters provide information on the additional time that they believe they would need, and the basis for the requested additional time period. In addition, the commenter should identify the specific rule change that is being requested and provide actual examples of how the rule change could cause a facility to be out of compliance when the September 1999 compliance date arrives, or when the changes are promulgated, whichever occurs later.

Title of § 63.481 and 63.1311. Because the Notification of Compliance Status is the report in which compliance (or non-compliance) is ultimately documented, the EPA has decided that it is not necessary for owners or operators of affected sources to submit a compliance schedule. For this reason, the EPA is proposing to remove the term ''compliance schedule'' throughout both rules (including the titles for § 63.481 and 63.1311), and to remove all requirements to report information in a ''compliance schedule'' throughout both rules. The titles of § 63.481 and 63.1311 are proposed to change from ''Compliance schedule and relationship of this rule to existing applicable rules,'' to ''Compliance dates and relationship of this rule to existing applicable rules.''

Sections 63.481(d) and 63.1311(d). The EPA is proposing changes to §§ 63.481(d) and 63.1311(d) that will allow owners and operators to request compliance extensions for equipment leaks in the same manner in which they would request a compliance extension for any other emission point. The promulgated version of §§ 63.481(d) and 63.1311(d) referred owners and operators to section 112(i)(3)(B) of the Act (via § 63.182(a)(6) of subpart H) for instructions on how to request a compliance extension for an equipment leak. The EPA found that the requirements in §§ 63.481(e) and 63.1311(e) satisfied the requirements in

section 112(i)(3)(B) of the Act; therefore, the EPA is proposing to simplify subparts U and JJJ by providing the same requirements (those in §§ 63.481(e) and 63.1311(e)) for owners and operators requesting a compliance extension for any emission point (i.e., for equipment leaks or other emission points).

Sections 63.481(d)(2)(iv) and 63.1311(d)(2)(iv). The EPA is proposing a clarifying edit to §§ 63.481(d)(2)(iv) and 63.1311(d)(2)(iv), to ensure that owners and operators realize that they only need to send their request for a compliance extension (for compressors) to the appropriate U.S. EPA Regional Office.

Sections 63.481(e) and 63.1311(e): Request for Compliance Extension. The EPA is proposing to amend §§ 63.481(e) and 63.1311(e) to allow requests for compliance extensions to be submitted in a separate submittal (as opposed to only in either the operating permit application or the Precompliance Report), and to allow requests for extensions to be made up until 120 days prior to the applicable compliance dates (at promulgation, the request had to be made one year in advance of the compliance date—i.e., when the Precompliance Report was due).

Furthermore, §§ 63.481(e)(3) and 63.1311(e)(3) are new paragraphs that are modeled after § 63.151(a)(6)(iv), proposing to allow a request for a compliance extension later than 120 days prior to the compliance date, under special circumstances. An example of such circumstances (''beyond reasonable control of the owner or operator'') would be if the owner or operator signed a contract to have control equipment installed by a date much earlier than the compliance date, but the contractor responsible for providing or installing that control equipment was not able to deliver the equipment and/or install it before the compliance date. The proposed addition of §§ 63.481(e)(3) and 63.1311(e)(3) would allow the owner or operator to request a compliance extension during the last 120 days before the compliance date, if the need arose during that 120 day period and if the need was due to circumstances beyond the reasonable control of the owner or operator. Submission of a compliance extension request would not, however, stay the applicability of subparts U and JJJ to the applicant during the pendency of the request.

The EPA is proposing these revisions to be consistent with the HON amendments to § 63.151(a)(6), and in recognition of the fact that review of most requests for compliance extensions can be completed within 120 days, and it is unlikely that the EPA would need 12 months to complete the review of such a request. In addition, the EPA is proposing to allow submittal of extension requests up to the compliance date in recognition that unforeseen difficulties, such as construction or operational difficulties can arise in the last moments of compliance planning. The proposed provisions in §§ 63.481(e)(3) and 63.1311(e)(3) are also considered necessary because it is unlikely that these proposed revisions will be final more than 120 days prior to the September 1999 compliance dates for certain control requirements. Any changes in the wording or requirements of the final rule could affect compliance planning for a source. Therefore, the EPA believes that it is necessary to provide owners and operators with some opportunity to apply for compliance extensions after the date that is 120 days prior to the compliance date.

Sections 63.481(k) and 63.1311(m). In the promulgated rule (§§ 63.481 and 63.1311), the EPA attempted to address the problem of overlapping requirements by specifying which provisions apply for each of the known cases of overlapping rules. It has come to the EPA's attention, however, that there was another broad category of overlapping Resource Conservation and Recovery Act (RCRA) requirements that were not addressed in the promulgated versions of subparts U and JJJ. In today's amendments, the EPA is proposing provisions to allow the use of certain RCRA-required monitoring, recordkeeping, and reporting provisions to satisfy the corresponding requirements in subparts U and JJJ. These proposed provisions would be added as §§ 63.481(k) and 63.1311(m).

Absent the proposed provisions, subparts U and JJJ would require the owner or operator to comply with the applicable monitoring, recordkeeping, and reporting provisions of subpart U or subpart JJJ, as well as those from RCRA rules, in cases where the same control device (e.g., an incinerator or adsorber) is subject to a RCRA rule and would be used to comply with the requirements for the non-wastewater provisions of subpart U or JJJ (through cross-reference to the HON wastewater provisions, this overlap problem was not an issue for wastewater streams at promulgation). Compliance with the applicable monitoring, recordkeeping, and reporting requirements of subpart U or JJJ as well as those in a RCRA rule would significantly increase the cost of compliance demonstrations without providing a corresponding environmental benefit. Therefore, to reduce this burden, the EPA is proposing to allow an owner or operator to elect to use the monitoring, recordkeeping, or reporting requirements in 40 CFR parts 260 through 272, instead of those otherwise required under subparts U and JJJ.

The EPA considers this proposed consolidation of overlapping monitoring, recordkeeping, and reporting requirements to be appropriate because the RCRA air rules and subparts U and JJJ have the same objective and monitor similar operational characteristics of control devices. In general, the RCRA requirements tend to require more frequent monitoring, and the retention of more detailed information. Therefore, it is possible to use the RCRA data and reports to demonstrate compliance with the monitoring, recordkeeping, and reporting requirements of subparts U and JJJ, for certain control devices.

Sections 63.481(l) and 63.1311(n). The EPA is proposing to add a paragraph at §§ 63.481(l) and 63.1311(n) to address instances in which requirements from other part 63 regulations overlap for the same heat exchange system(s) or waste management unit(s) that are subject to subpart U or JJJ. Under the proposed additions of §§ 63.481(l) and 63.1311(n), compliance with subpart F (or another subpart of part 63 that requires compliance with § 63.104) for heat exchange systems, and/or compliance with subpart G (or another subpart of part 63 that requires compliance with §§ 63.132 through 63.147) for waste management units, constitutes compliance with the heat exchange system requirements and/or waste management unit requirements in subpart U or JJJ.

2. Changes Unique to Polymers and Resins I

Section 63.481(d)(5) and (6). The EPA is proposing to change the compliance date to September 5, 1999 (instead of September 6, 1999) in both of these paragraphs so that they are consistent with other provisions in subpart U (e.g., § 63.480(i)(3)).

Section 63.481(j). The proposed addition of § 63.481(j) mirrors a provision that was promulgated in subpart JJJ (as § 63.1311(k)). This provision states that sources that were previously subject to 40 CFR part 60, subpart VV and that become subject to subpart JJJ will no longer be subject to the provisions in 40 CFR part 60, subpart VV on the compliance dates specified in subpart JJJ . A similar provision should have also been

included in subpart U at promulgation, but was overlooked at that time; therefore, the EPA proposes adding this provision at § 63.481(j).

3. Changes Unique to Polymers and Resins IV

Section 63.1311(d)(3) and (d)(5). The EPA is proposing to change the compliance date in § 63.1311(d)(3) from September 14, 1998 to September 12, 1998, and to change the compliance date in § 63.1311(d)(5) from September 13, 1999 to September 12, 1999 in order to be consistent with other provisions throughout subpart JJJ (e.g., § 63.1311(b) and (c)).

Section 63.1311(i)(3). The EPA is proposing to add this paragraph to clarify the intent of the promulgated rule that existing affected sources producing PET that are subject to and complying with the ethylene glycol concentration limits from the Polymers Manufacturing NSPS (i.e., 40 CFR 60.562–1(c)(1)(ii)(B) or 60.562–1(c)(2)(ii)(B)) shall continue to comply with those requirements, and not the requirements of subpart JJJ.

D. Definitions—Proposed Changes to §§ 63.482 and 63.1312

1. Changes Common to Polymers and Resins I and IV

In the definition section of subparts U and JJJ, several changes were necessitated as a result of changes to the HON definitions that they cross-referenced. Paragraphs §§ 63.482(a) and 63.1312(a) contain a list of terms for which definitions are ''borrowed'' from other part 63 subparts; specifically subpart A (General Provisions) and subparts F, G, and H (HON). Many of the referenced HON definitions include references to specific HON sections or to HON tables. The EPA has concluded that this situation could cause confusion when those definitions are applied to subparts U and JJJ. Therefore, the EPA has removed several terms from the lists in §§ 63.482(a) and 63.1312(a) and has defined them in §§ 63.482(b) and 63.1312(b). This proposed change is intended to clarify the applicability of the definitions to subpart U and JJJ affected sources, and the EPA does not intend for any of the newly proposed definitions to change the meaning of the terms that are being defined in §§ 63.482(b) and 63.1312(b), instead of cross-referenced through §§ 63.482(a) and 63.1312(a). Examples of such terms include ''maximum true vapor pressure'', ''flexible operation unit,'' and ''continuous record.''

In addition, the EPA determined that references to several terms were not needed because these terms are not used in subparts U and/or JJJ. The EPA is also proposing to remove these terms from the list in §§ 63.482(a) and 63.1312(a). Examples include ''reference control technology for process vents'' and ''fixed roof.'' Also, due to changes in the HON, the EPA is proposing to remove several terms that were referenced at promulgation. For example, the promulgated HON amendments no longer contain a definition of the term ''point of generation,'' which was cross-referenced by §§ 63.482(a) and 63.1312(a) at promulgation of subparts U and JJJ. Finally, the EPA is proposing to remove cross-references to certain subpart A and HON definitions, and to instead provide definitions that are specific to subpart U and/or JJJ, to improve clarity in subparts U and JJJ. Every definition discussed below represents a proposed change from the promulgated rules.

Aggregate batch vent stream. In this definition, the EPA proposes to remove the last phrase (''before being routed to a control device that is in continuous operation'') to remove any implication that the control device defines the vent stream. In addition, the EPA is proposing to add the concept of hard-piping or otherwise connecting batch process vents together (to create continuous flow) to the definition of an aggregate batch vent stream.

Annual Average Batch Vent Concentration. The EPA is proposing to add a definition for this term for the sake of specificity in the rule, and to distinguish it from the term ''annual average concentration,'' which applies to concentrations in wastewater streams. The newly proposed term (''annual average batch vent concentration'') is used only with regard to batch vents, whereas the promulgated term ''annual average concentration'' was used in reference to both batch vents and wastewater streams. This proposed separation of terms should reduce the confusion caused by using the same term for both situations in the promulgated rules.

Annual Average Batch Vent Flow Rate. The EPA is proposing to include two separate definitions for ''annual average flow rate,'' and ''annual average batch vent flow rate,'' to minimize confusion between the applicability of the two terms to process wastewater (for which the term ''annual average flow rate'' is used) as opposed to batch process vent streams (for which the term ''annual average batch vent flow rate'' is used).

''Annual Average Concentration'' and ''Annual Average Flow Rate''. The EPA is proposing to add definitions for these terms, and to remove these terms (which were listed as being defined in § 63.111 of subpart F) from the list of cross-referenced definitions in the promulgated versions of subparts U and JJJ. The newly proposed definitions of these terms in §§ 63.482(b) and 63.1312(b) point to the HON requirements, but remind owners and operators to apply the exceptions listed in §§ 63.501 and 63.1330 to the wastewater provisions in the HON.

''Average Batch Vent Concentration''. The addition of this definition is being proposed because it became apparent that terms such as ''average batch concentration'' and ''average concentration'' were used inconsistently throughout the rules. In today's proposed amendments, the EPA has eliminated the use of the terms ''average batch concentration'' and ''average concentration'' throughout subparts U and JJJ, and has replaced those terms with the more specific term ''average batch vent concentration'' throughout both proposed rules.

''Average Batch Vent Flow Rate''. The EPA is proposing to define this term both for the sake of accuracy and specificity in these rules, and in order to distinguish it from the term ''average flow rate,'' which is not used in subpart U or JJJ, but is used in the wastewater provisions in the HON, which these subparts reference. ''Average flow rate'' is defined in § 63.111 of subpart G.

''Batch Cycle Limitation''. The EPA is proposing to remove the whole concept of the ''batch cycle limitation'' (per se) and replace it with a ''batch mass input limitation.'' Therefore, the EPA is proposing to remove this definition from subparts U and JJJ. See Section II.I of this notice for more details regarding the proposed change to a batch mass input limitation.

''Batch Front-end Process Vent'' and ''Batch Process Vent''. The EPA is proposing several changes to these definitions. The first is to replace the term ''point of emission'' with the term ''process vent'' throughout the definitions of ''batch front-end process vent'' and ''batch process vent,'' because the only emission points that are considered to be batch front-end process vents or batch process vents are process vents. The second proposed change to these definitions is to restructure them so that it is clear that if a process vent has less than 225 kilograms per year (kg/yr) of organic HAP emissions, then that process vent is not a batch process vent. Finally, the EPA is proposing to edit these definitions to add specific references to where and how the annual organic HAP emissions are measured to determine whether or not at least 225

kg/yr are being emitted from the process vent. Similar changes are also being proposed in the definitions of ''Group 1 Batch Front-end Process Vent'' and ''Group 1 Batch Process Vent,'' in subparts U and JJJ, respectively, as described in more detail below.

''Batch Mass Input Limitation''. This definition was added as a result of the proposed change discussed under Section II.I of this notice, which would replace the batch cycle limitation concept with the batch mass input limitation concept (i.e., the units used in the limitation are being proposed to be changed from ''number of cycles'' to ''mass input'').

''Batch Mode,'' ''Batch Front-end Process,'' ''Batch Process Vent,'' ''Batch Process,'' and ''Batch Unit Operation''. The new definition for ''batch mode'' is part of a set of proposed changes to the definitions of ''batch process,'' ''batch front-end process,'' and ''batch unit operation.'' It has been suggested that the promulgation definitions of batch front-end process vent/batch process vent, batch process, and batch unit operation, and continuous process, continuous process vent, and continuous unit operation caused confusion. In considering the intent and usage of these terms, the EPA has decided to propose changes to these definitions. First, for the production of some thermoplastic products, an entire process unit must be classified as ''batch'' or ''continuous,'' because some subcategories (and the resulting control requirements) were established on this basis. For purposes of establishing a process unit as either ''batch'' or ''continuous,'' the terms ''batch process'' and ''continuous process'' are used. The definitions of those terms classify the process unit as ''batch'' or ''continuous'' based on whether the reactor(s) in the process unit are operated in a ''batch mode'' or ''continuous mode'' (the EPA is also proposing to replace the terms ''batch process mode'' and ''continuous process mode'' with the terms ''batch mode'' and ''continuous mode'' in these amendments).

However, the EPA intended, and continues to intend, that a process vent be classified as ''continuous'' or ''batch'' based on the unit operation from which the emissions originate. It is possible that in a process where the reactor is operated in a batch mode (thus meaning the entire process is operated as a ''batch process''), subsequent unit operations could be continuous. In fact, in the elastomer and thermoplastic industries, it is common for the reactors to be batch and the finished unit operations (e.g., dryers) to be continuous. Therefore, within a batch process, there would be some batch process vents (e.g., reactor vents) and some continuous process vents (e.g., dryer vents).

In an attempt to clarify this situation, the EPA is proposing to add and amend related definitions. The foundation for the proposed concepts is the newly added definitions of ''batch mode'' and ''continuous mode,'' which describe operational characteristics of these two ''modes.'' The EPA is proposing to modify the definitions of ''batch unit operation'' and ''continuous unit operation,'' basing the definitions on whether the unit operation is operated in a batch (or continuous) mode. This is consistent with the promulgated approach, which classified process vents based on whether they originated at a batch or continuous unit operation. Finally, the EPA is proposing to modify the definitions of ''batch process'' and ''continuous process'' so that these definitions are based on whether the reactors are operated in a batch or continuous mode. The EPA believes that these proposed changes should eliminate the confusion between these terms.

''Combined Vent Stream''. The EPA is proposing to add this definition to clarify what could be included in a ''combined vent stream'' (e.g., a combination of two or more of the following types of process vents: batch process vents, continuous process vents, and aggregate batch vent streams), for the purposes of subparts U and JJJ.

''Compliance Schedule''. For the reasons explained more fully in section B.1. of this notice, the EPA is proposing to remove this term from the list of cross-referenced definitions contained in §§ 63.482(a) and 63.1312(a) because it is no longer cross-referenced or used in subpart U or JJJ.

''Construction''. The EPA is proposing to add definitions of ''construction'' which are specific to subparts U and JJJ. In the newly proposed definitions, the term ''stationary source'' (which was used in the HON definition) is replaced with the term ''affected source,'' in order to clarify that the newly proposed definitions only apply to the construction of a subpart U or JJJ ''affected source.'' The proposed definitions also make clear (as proposed under §§ 63.480(i)(1) and 63.1310(i)(1)) that the addition of an EPPU/TPPU or group of EPPU/TPPU's triggers the definition of ''construction'' when the ''addition'' of the EPPU/TPPU is the result of a change in primary product (causing a formerly non-elastomer/non-thermoplastic product process unit to become an EPPU/TPPU), if the other requirements listed in §§ 63.480(i)(1) and 63.1310(i)(1) are met.

''Continuous Mode,'' ''Continuous Front-end Process Vent,'' ''Continuous Process Vent,'' ''Continuous Process,'' and ''Continuous Unit Operation''. The proposed changes to these definitions mirror those being proposed for the definitions of ''batch mode,'' ''batch front-end process vent'', ''batch process vent'', ''batch process,'' and ''batch unit operation.'' An explanation for those proposed changes is given above, under the subsection entitled *''Batch Mode; Batch Front-end Process; Batch Process Vent; Batch Process; and Batch Unit Operation.''* However, other unrelated changes were also made to these definitions, as described in other parts of this section, including under ''Changes Unique to Polymers and Resins I,'' and ''Changes Unique to Polymers and Resins IV.''

''Continuous Record'' and ''Continuous Recorder''. The EPA has determined that it was incorrect to merely cross-reference the definitions of these two terms in § 63.111, and is proposing to add these two definitions to subparts U and JJJ by modelling the new definitions after the HON definitions, but substituting the appropriate references to the recordkeeping and reporting requirements in subparts U and JJJ for the HON references used in the definitions in § 63.111.

''Duct Work''. In §§ 63.482(a) and 63.1312(a), the EPA is proposing to add a cross-reference to the definition of the term ''duct work'' in the HON (§ 63.161) because the EPA is also proposing to use this term as a clarifying measure in the definitions of EPPU and TPPU (see explanations for changes to those definitions in this section).

''Emission Limitation''. Due to some ambiguity in the distinction in meaning between the terms ''provisions,'' ''emission limitations,'' and ''emission standards,'' the EPA is proposing to clearly define what is meant when these rules refer to an ''emission limitation,'' by cross-referencing the definition of that term in Section 302(k) of the Clean Air Act (Act). The Act defines an emission limitation as:

> ''a requirement * * * which limits quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction and any design, equipment, work practice or operational standard promulgated under this Act.''—Section 302(k).

The EPA believes that this definition encompasses percent HAP reduction requirements, outlet concentration

requirements, compliance options that specify the use of a flare, temperature requirements for condensers, and a variety of other provisions intended to reduce emissions, including leak detection and repair (LDAR) programs for the control of emissions from equipment leaks.

Because section 112(h)(1) draws a distinction between the use of the term ''emission standard'' and the use of the term ''emission limitation,'' the EPA decided it would be best to specifically refer to the broader term (defined in Section 302(k) of the Act), especially due to the manner in which that term is used in the proposed revisions to §§ 63.480(j) and 63.1310(j).

''Emission Point''. The EPA is proposing a correction to the definition of ''emission point,'' by specifying that ''waste management units,'' rather than each ''wastewater streams'' are emission points. As a result of the HON amendments, ''equipment subject to § 63.149'' has also been added to the list of emission points described in this definition.

''Equipment''. At promulgation of subparts U and JJJ, the definition of ''equipment'' in § 63.161 was cross-referenced. However, it came to the EPA's attention that unilaterally cross-referencing that definition was problematic, in that the definition of ''equipment'' in § 63.161 was not appropriate for non-equipment leak components. The definition of ''equipment'' in § 63.161 applies uniquely to equipment leak components, described for the purposes of subpart H. For that reason, rather than cross-referencing the definition in § 63.161, the EPA is proposing to add definitions for ''equipment'' to both subparts U and JJJ, to define the term ''equipment'' for specific use with the equipment leak provisions in subparts U and JJJ.

''Existing Affected Source'' and ''New Affected Source''. The EPA is proposing to add definitions for the terms ''existing affected source'' and ''new affected source'' that refer to the appropriate criteria in §§ 63.480(a) and 63.1310(a).

''Existing Process Unit'' and ''New Process Unit''. The proposed definitions of ''existing affected source'' and ''new affected source'' are not appropriate to use in some parts of §§ 63.480(f) and 63.1310(f), because, at the time that an owner or operator is determining whether or not a process unit is subject to subpart U or subpart JJJ, it is not yet part of an ''affected source.'' Therefore, the proposed definitions for ''existing process unit'' and ''new process unit'' mirror the definitions for ''existing affected source'' and ''new affected source,'' except that the proposed definitions apply to process units rather than entire sources.

''Flexible Operation Unit''. The EPA is proposing to add a definition for this term to both subparts U and JJJ, instead of cross-referencing the definition in § 63.101 (as was done at promulgation), because the HON definition of ''flexible operation unit'' refers to ''chemical manufacturing process units.'' The proposed definitions to be added to subparts U and JJJ are modeled after the HON definition of ''flexible operation unit,'' but discuss ''process units'' instead of ''chemical manufacturing process units.''

''Group 1 Batch Front-end Process Vent'' and ''Group 1 Batch Process Vent''. The EPA is proposing to amend these definitions in order to clarify how and where the annual organic HAP emissions and annual average batch vent flow rate are determined.

''Group 1 Wastewater Stream''. The proposed amendments to this definition reflect the amendments promulgated for the definition of ''Group 1 wastewater stream'' in § 63.111. The EPA is also proposing to clarify that the wastewater streams are ''from'' (not ''at'') an existing or new affected source, so that wastewater streams that are from a non-thermoplastic or non-elastomer facility, but that flow across property belonging to an affected source without being changed or added to in any way, are not necessarily considered to be Group 1 wastewater streams under subparts U and JJJ. Other proposed changes include a reference to the Group 1 criteria in the HON (§ 63.132(c)) and references to the organic HAP tables in subpart U and subpart JJJ, respectively, and to § 63.501(a)(10) for subpart U and § 63.1330(b)(8) for subpart JJJ.

''Hard-piping''. In §§ 63.482(a) and 63.1312(a), the EPA is proposing to add a cross-reference to the definition of this term in the HON (§ 63.111) because the EPA is also proposing to use this term as a clarifying measure in the definitions of EPPU and TPPU (see explanations for changes to those definitions in this section).

''Highest-HAP Recipe''. The EPA is proposing to add this definition to both subparts U and JJJ in essence to replace the concept of ''worst-case HAP emitting product'' which was promulgated in both rules. The concept of ''highest-HAP recipe'' is much more straightforward, and the product meeting the definition of ''highest-HAP recipe'' is more easily determined than the ''worst-case HAP emitting product.'' The explanation of the proposed amendments to the batch process vent group determination procedures in Section II.I of this notice provides more detail on the rationale behind this change.

''Initial Start-up''. The EPA is proposing to add a definition for ''initial start-up'' that mirrors the definition in § 63.101, except that initial start-up is triggered by the first time that an elastomer or thermoplastic product is produced in the unit or equipment, rather than by the first time the unit begins production or the equipment is put into operation for any product.

''Maintenance Wastewater''. The EPA is proposing to add a definition for ''maintenance wastewater'' to subpart U, and to amend the promulgated definition of ''maintenance wastewater'' in subpart JJJ, so that both definitions mirror the HON definition for this term in § 63.101, with a special provision stating that the generation of wastewater from the routine rinsing or washing of equipment in batch operation between batches is not maintenance wastewater, but is considered to be process wastewater, for the purposes of subparts U and JJJ.

''Maximum True Vapor Pressure''. The EPA is proposing to remove this definition from the list of cross-referenced definitions in §§ 63.482(a) and 63.1312(a), and to add a definition specific to subparts U and JJJ, because, unlike the HON, these rules do not cover transfer operations.

''Month'' and ''Year''. The EPA is proposing to delete the definitions of ''month'' and ''year'' from subpart U, and to delete the definition of ''year'' from subpart JJJ, because these definitions could be misleading, since the proposed paragraphs §§ 63.481(m) and 63.1311(o) define all calendar periods. The EPA is also requesting comments on the idea of removing these definitions from § 63.1423(b) of subpart PPP, the Polyether Polyols Production NESHAP.

''Multicomponent System''. The EPA is proposing to add a definition for this term in order to clarify the term's meaning (due to its use in §§ 63.488(b) and 63.1323(b)), which is that a ''multicomponent system'' is a stream whose liquid and/or vapor contains more than one compound.

''Net Positive Heating Value''. The EPA is proposing to add a definition for ''net positive heating value,'' because this term is used in the definition of ''recovery device.'' The proposed definition explains that, as used in subparts U and JJJ, ''net positive heating value'' is the difference between the heat value of the recovered chemical stream and the minimum heat value required to ensure a stable flame in a

combustion device. This difference must have a positive value when used in the context of ''recovering chemicals for fuel value,'' which is one of the distinguishing characteristics of a ''recovery device,'' as defined in subparts U and JJJ. The proposed addition of a definition of ''net positive heating value'' is important because it helps distinguish between recovery devices and devices that are not recovery devices, insofar as the properties listed in subparts U and JJJ describe a ''recovery device.''

''*On-site*''. The EPA is proposing to add this definition, based on the definition for the same term that was added in the amendment to § 63.101. This is needed because the EPA is also proposing an amendment to §§ 63.506(h)(1)(vi) and 63.1335(h)(1)(vi), specifying the requirements for keeping descriptions of monitoring systems at affected sources (based on the amendment to the HON that added similar requirements at § 63.152(g)(1)(vi)(D).) The proposed definition of ''on-site'' clarifies that the records may be kept anywhere at the source, such as a central filing area.

''*Operating Day*''. The EPA is proposing to add a definition for the term ''operating day'' in order to distinguish an operating day from a calendar day. Operating days are important for the purposes of determining daily average monitoring values and batch cycle daily average monitoring values.

''*Organic Hazardous Air Pollutant(s) (Organic HAP)*''. The EPA is proposing to amend this definition, in order to reduce the burden on industry that was implied by the promulgated clause that said that any chemical that ''has been or will be reported under any Federal or State program, such as EPCRA section 311, 312, or 313 or Title V,'' was an organic HAP. The proposed definition states that only chemicals listed in Table 5 of subpart U (for subpart U), or Table 6 of subpart JJJ (for subpart JJJ), or that are listed in Table 2 of subpart F, that are ''knowingly produced or introduced'' into the manufacturing process constitute ''organic HAP'' for the purposes of subparts U and JJJ.

''*Process Unit*''. Because the terms ''pipes'' and ''ducts,'' which were used in the promulgated version of this rule, were undefined, the EPA has refined the terminology, to use the terms ''hard-piping'' and ''duct work.'' The proposed amendments to §§ 63.482(a) and 63.1312(a) now cross-reference the definitions of ''hard-piping'' and ''duct work'' in §§ 63.111 and 63.161, respectively.

''*Process Vent*''. The EPA is proposing to amend this definition primarily in order to clarify what constitutes the ''beginning'' and what constitutes the ''end'' of a process vent. Under the proposed changes to this definition, a gaseous emission stream is no longer considered to be a process vent after the stream has been controlled and monitored in accordance with the applicable provisions of these rules.

''*Product*''. The EPA is proposing to amend the definition of ''product'' in subparts U and JJJ in order to clarify that there can be several different ''recipes'' (see below) for the same product, and that, in the case of elastomer products, there can be more than one ''grade'' for a product (see Section II.D of this notice). An additional sentence also clarifies that non-polymer chemicals are considered to be products, if they are manufactured at a process unit.

''*Recipe*''. The EPA is proposing to add a definition for the term ''recipe,'' as a very specific mixture of monomers, additives, or other reactants. This new definition would clarify that a single type of product (e.g., butyl rubber or acrylonitrile butadiene styrene latex) could be produced using several different recipes.

''*Reconstruction*''. The EPA is proposing to add a definition of ''reconstruction'' that is specific to subparts U and JJJ. In the newly proposed definition, the term ''stationary source'' (used in the HON definition of ''reconstruction'') has been replaced with the term ''affected source,'' in order to clarify that this definition only applies to the reconstruction of a subpart U or JJJ ''affected source.'' The proposed definitions also make clear that (as proposed under §§ 63.480(i)(2) and 63.1310(i)(2)) the addition of an emission point triggers the definition of ''reconstruction,'' when the ''addition'' of the emission point is the result of a process change that caused a Group 2 emission point to become a Group 1 emission point, or that caused a non-emission point to become a new ''emission point,'' as defined in subparts U and JJJ, as long as the other requirements listed in §§ 63.480(i)(2) and 63.1310(i)(2) have also been met.

''*Recovery Device*''. The definition of ''recovery device'' that the EPA is proposing to add to subparts U and JJJ is modeled after the amended definition for the same term in § 63.101. However, the proposed definition has been slightly restructured by including the purposes for which a recovery device may be used in a numbered list.

''*Recovery Operations Equipment*''. The EPA is proposing to amend this definition to clarify that recovery or recapture devices used as control devices are not considered to be ''recovery operations equipment.''

''*Residual*''. The EPA is proposing to add a definition for the term ''residual'' (instead of simply cross-referencing the definition found in § 63.111), to clarify that residuals for subparts U and JJJ will be liquid or solid materials containing organic HAP listed in Table 5 of subpart U (for subpart U) or in Table 6 of subpart JJJ (for subpart JJJ) that are removed from a wastewater stream by a waste management unit.

''*Shutdown*'' *and* ''*Start-up*''. The EPA is proposing to add definitions of ''shutdown'' and ''start-up'' that are modeled after the HON definitions that subparts U and JJJ previously cross-referenced (§ 63.101), but which have been modified slightly to include subpart U and JJJ cross-references, and to add provisions specific to batch process vents.

''*Storage Vessel*''. The EPA is proposing to amend this definition to remove the implication that if a tank is not assigned to an EPPU or TPPU, it is not a storage vessel. A correction is also being proposed in subpart U, which would change the incorrect term ''bottoms receiver tanks'' to the correct term ''bottoms receivers.''

''*Total Resource Effectiveness (TRE) Index Value*''. The EPA is proposing to add a rule-specific definition for this term in both subpart JJJ and subpart U. The proposed definitions are largely modeled after the definition of the same term in § 63.111, but contain changes specific to the individual rules to which they apply.

''*Vent Stream*''. The EPA is proposing to add a definition for the term ''vent stream'' (instead of simply cross-referencing the definition found in § 63.111), because the definition of ''vent stream'' in § 63.111 did not include the concept of batch process vents or aggregate batch vents.

''*Waste Management Unit*''. The definition of ''waste management unit'' that the EPA is proposing to add to subparts U and JJJ refers to the amended definition of the term in § 63.111, with a few word substitutions (e.g., replacing CMPU with EPPU or TPPU). The amended definition of ''waste management unit'' in § 63.111 helps clarify the idea that only once wastewater has been *discarded* from the process unit does it become subject to the wastewater provisions. The amended HON definition also draws a clear distinction between waste management units and recovery equipment that is considered to be part of the process unit.

''*Wastewater*''. The definition for ''wastewater'' that the EPA is proposing to add to subparts U and JJJ is largely modeled after the amended HON definition for the same term in §§ 63.101 and 63.111, except that it refers to the appropriate organic HAP lists in subparts U and JJJ (i.e., Table 5 of subpart U and Table 6 of subpart JJJ). The EPA is proposing to add these definitions for the term ''wastewater'' to subparts U and JJJ and to delete the cross-references to the HON definition that were promulgated under §§ 63.482(a) and 63.1312(a). However, the proposed definitions in subparts U and JJJ otherwise mirror the definition promulgated in § 63.111, which was amended in order to add the concept of the fluid having been ''discarded'' from a process unit. The proposed ''discard'' concept is fundamental in distinguishing which fluids exiting the EPPU or TPPU are subject to the wastewater provisions in §§ 63.501 or 63.1330, respectively. Together with the point of determination and in-process equipment concepts in the amended HON, the proposed definition of ''wastewater'' in subparts U and JJJ, like the amended HON definition, makes decision-making for owners and operators of facilities (and for regulatory authorities) more straightforward, and makes the proposed rules easier to implement than the promulgated rules. Because fluids in the in-process equipment are also controlled under §§ 63.501 and 63.1330 in these proposed amendments, emission reductions will not be affected by these proposed changes.

''*Wastewater Stream*''. The EPA is proposing to add a definition of this term to both subparts U and JJJ, because the definition of this term in § 63.111 is inappropriate for subparts U and JJJ, in that it refers to ''wastewater as defined in § 63.101.'' This is inappropriate for subparts U and JJJ because the EPA is proposing to define wastewater in §§ 63.482 and 63.1312, rather than refer to the definition of that term in § 63.101. Therefore, the EPA is proposing to add the proposed definitions for the term ''wastewater stream'' to subparts U and JJJ and to delete the cross-references to the HON definition of this term in §§ 63.482(a) and 63.1312(a).

2. Changes Unique to Polymers and Resins I

''*Block Polymer*''. The EPA is proposing to add a definition of ''block polymer'' because that term is used in the definition of the term ''resin.''

''*Continuous Front-end Process Vent*''. In addition to the changes mentioned above under ''Changes Common to Polymers and Resins I and IV,'' the EPA is proposing amendments to this definition to correct an error made at promulgation: the scmm and ppmv cutoffs were meant to distinguish between Group 1 and Group 2 continuous front-end process vents, rather than to be a defining characteristic of all continuous front-end process vents. Therefore, the amended definition of this term has only one cutoff, which is that the process vent must contain greater than 0.005 weight percent total organic HAP. The proposed definition is consistent with the HON's definition for ''process vent,'' which it was intended to mirror. In addition, the EPA is proposing to add a sentence to the end of this definition, clarifying where and how organic HAP weight percent is to be determined.

''*Control Device*''. The proposed edits to this definition in subpart U are intended to remove any ambiguity that might have been caused by the promulgated structure of the definition. In other words, the EPA is proposing to remove the phrase ''replaced with'' from the promulgated definition of ''control device,'' and to instead use the phrase ''shall apply'' in the proposed definition.

''*Elastomer Product*'' *and* ''*Elastomer Type*''. The EPA is proposing to edit these definitions to clarify that, under subpart U, there are 13 distinctly different ''elastomer types,'' which are listed in the definition of ''elastomer product.''

''*Elastomer Product Process Unit (EPPU)*''. The EPA is proposing changes to this definition to resolve several concerns, and to make a correction. The last sentence of this definition at promulgation (beginning ''Compounding units * * *'') was an inadvertent carry over from subpart JJJ, and did not belong in this definition. That sentence has been removed from the definition proposed in this notice.

Because the terms ''pipes'' and ''ducts,'' which were used in the promulgated version of this rule were undefined, the EPA has refined the terminology, to use the terms ''hard-piping'' and ''duct work.'' The proposed amendments now cross-reference the definitions of ''hard-piping'' and ''duct work'' in ''63.111 and 63.161, respectively. New language has also been added to clarify that utilities and other non-process lines are not considered to be part of the EPPU.

''*Emulsion Process*'' *and* ''*Suspension Process*''. The EPA is proposing to amend the definitions of ''emulsion process'' and ''suspension process,'' which were nearly identical at promulgation, so that they are distinguishable from one another, and so that they are more precise. The terms ''emulsion'' is central to the distinction between two different elastomer products: styrene butadiene rubber by solution, and styrene butadiene by emulsion. The term ''suspension process'' is important for the purposes of defining ''ethylene propylene rubber.''

''*Epichlorohydrin Elastomer*''. The EPA is proposing to amend this definition to simplify the term ''epoxy resins'' to ''epoxies,'' in order to avoid contradictions between this definition, the definition of ''elastomer,'' and the definition of ''resin.'' As will be explained further below, at promulgation, the definition of ''resin'' stated that a resin is not an elastomer and the definition of ''elastomer'' said that an elastomer is not a resin, but the EPA decided that this circular way of defining those terms was not helpful. So, in addition to proposing to remove the statement in the definition of ''resin'' that indicated that a resin was not an elastomer, the EPA is proposing to replace the term ''epoxy resins'' with the term ''epoxies,'' in order to avoid even greater confusion over the interactions between these definitions.

''*Ethylene-propylene rubber*''. The EPA is proposing to take out the phrase ''moderate amount of the'' (which precedes the phrase ''third polymer''), based on the fact that the phrase ''moderate amount of'' is not quantitatively defined, and therefore offers little useful guidance.

''*Front-end*''. The EPA is proposing to remove a sentence from this definition that caused confusion and was unnecessary. In particular, the idea that the ''front-end'' began specifically at ''raw material storage'' was problematic, in that material could be hard-piped into a process unit without first being ''stored,'' per se.

''*Glass Transition Temperature*''. The EPA is proposing to define this term (which is used in the definition of ''elastomer'') as part of these amendments, because the meaning of this term, which is central to the definition of ''elastomer,'' might not be common knowledge to owners and operators.

''*Grade*''. The proposed changes to this definition are intended to better distinguish between the terms ''product,'' ''recipe,'' and ''grade.'' The proposed definition clarifies that a grade is a ''group of recipes'' used for the production of one elastomer type, but that more than one recipe can also make up one ''grade.''

''*Group 1 Continuous Front-end Process Vent*''. The changes that the

EPA is proposing to make to this definition actually represent a correction, in that this definition was intended to mirror the HON definition for ''Group 1 Process Vent,'' but was inadvertently changed to have more limiting criteria at the promulgation of subpart U. The missing criteria (i.e., flow rate greater than or equal to 0.005 standard cubic meter per minute and total organic HAP concentration greater than or equal to 50 parts per million by volume) have been added to the proposed amendments to this definition.

''Group 2 Continuous Front-end Process Vent''. For similar reasons to those given above, the EPA is also proposing to amend this definition, to include the missing distinguishing criteria (i.e., flow rate less than 0.005 standard cubic meter per minute, total organic HAP concentration less than 50 parts per million by volume, or total resource effectiveness index value greater than 1.0).

''Polybutadiene Rubber by Solution'' and ''Styrene Butadiene Rubber by Solution''. These two definitions are being separated in these proposed amendments in order to clarify that they constitute two different elastomer products.

''Resin''. The proposed changes to the definition of ''resin'' are intended as clarifications, and make no substantive change to this definition.

''Stripper''. The EPA is proposing to add a very basic definition of the term ''stripper'' to subpart U, because this term is used in subpart U and the EPA believes that it would be helpful to define the term.

''Stripping''. The EPA is proposing to define the term ''stripping'' rather than the term ''stripping technology,'' because the term ''stripping'' is used in subpart U. The proposed definition of ''stripping'' is largely based on the promulgated definition of ''stripping technology,'' except that the EPA is proposing to be more specific about which processes are considered to be stripping and which processes are not considered to be stripping.

Finally, the EPA is proposing to remove the following definitions from subpart U with these proposed amendments because these terms are not used in subpart U: ''mass process,'' ''material recovery section,'' ''polymerization reaction section,'' ''raw materials preparation section,'' and ''solid state polymerization unit.''

3. Changes Unique to Polymers and Resins IV

''Continuous Process Vent''. In addition to the changes mentioned above under ''Changes Common to Polymers and Resins I and IV,'' the EPA is proposing to add a sentence to the end of this definition, clarifying where and how organic HAP weight percent is to be determined.

''Emulsion Process''. The EPA is proposing to expand upon this definition, in an attempt at further clarifying the differences between emulsion processes, mass processes, and suspension processes.

''Heat Exchange System''. The EPA is proposing to replace the word ''operated'' with the phrase ''intended to operate'' in this definition, so that if contact occurs between the cooling medium and the process fluid or gases, the cooling system does not automatically cease to be a ''heat exchange system.''

''Material Recovery Section''. There are five changes proposed for this definition. First, the EPA is proposing to remove the phrase ''purification and treatment'' from the definition. The EPA believes that this phrase could be interpreted to include wastewater treatment processes; this was not the intent of the Standards of Performance for VOC Emissions from the Polymer Manufacturing Industry or the promulgated Polymers and Resins IV rule. Because this misinterpretation could occur, the proposed language removes this phrase and replaces it with the terms ''separation'' and ''recovery.'' The EPA judged that the terms ''separation'' and ''recovery'' more accurately describe the physical operations that are taking place.

Second, the EPA believes that the phrase ''off-site purification and treatment'' could be misinterpreted to exclude on-site activities. Based on the background documents for the Standards of Performance for VOC Emissions from the Polymers Manufacturing Industry, which served as the basis for the definition of ''material recovery section'' and the provisions contained in §§ 63.1316 through 63.1320, there is a distinction between on-site and off-site activities in the Standards of Performance for VOC Emissions from the Polymers Manufacturing Industry, and the proposed language is intended to clarify this distinction. The phrase ''separates and recovers * * * for sale or return to the TPPU'' signifies on-site activities and the phrase ''separates * * * for off-site recovery'' signifies off-site activities.

Third, the proposed language is intended to clarify that equipment recovering both ethylene glycol and any other materials is considered to be in the polymerization reaction section, and not in the material recovery section. In response to a comment at proposal, the promulgated rule attempted to make this change but did not do so adequately. Specifically, the proposed language removes the parenthetical phrase ''(e.g., methanol)'' to avoid implying that methanol is the only other material of interest.

Fourth, the entire definition of material recovery section has been revised to clarify that the chemicals involved are restricted to ethylene glycol and methanol for PET affected sources and styrene for polystyrene affected sources. During development of the Standards of Performance for VOC Emissions from the Polymers Manufacturing Industry, ethylene glycol and methanol (for PET) and styrene (for polystyrene) were the only chemicals considered to be involved with the material recovery section. Therefore, other equipment recovering other chemicals are not considered to be part of the material recovery section, under the amended definition proposed with today's action.

Fifth, the proposed language removes the following sentences:

> Equipment that treats recovered materials are to be included in this process section, but equipment that also treats raw materials are not to be included in this process section. The latter equipment are to be included in the raw materials preparation section.

These sentences were removed because the situation described by them does not occur in the production of PET or polystyrene.

''Raw Material Preparation Section''. Slight wording changes have been made to this definition, to clarify the intended meaning of the term ''raw material preparation section.'' At promulgation, this definition stated that the raw material preparation section began with the equipment used to transfer raw materials from storage and ended with the last piece of equipment that prepares the material for polymerization. Under the proposed definition, instead of saying that the raw material preparation section ''begins'' with the equipment used to transfer raw materials from storage, the rule states that the raw materials preparation section ''includes'' the equipment used to transfer raw materials from storage.

''Solid State Polymerization Process''. The EPA is proposing to define ''solid state polymerization process'' instead of ''solid state polymerization unit'' (as was done at promulgation), because the term ''solid state polymerization process'' is used in subpart JJJ (in § 63.1310(d)(5)), while the term ''solid state polymerization unit'' is not.

''Storage Vessel''. In addition to the proposed amendments described above

as common changes to subparts U and JJJ, in subpart JJJ the EPA is also proposing to add ''surge control vessels and bottoms receivers'' to the list of equipment that are not considered to be storage vessels under the definition of ''storage vessel'' in subpart JJJ. This change corresponds to the EPA's proposed change under which surge control vessels and bottoms receivers would be subject to the requirements of subpart H, to be consistent with the approach taken in subpart U, with regard to how it handles surge control vessels and bottoms receivers, but this proposed change will not cause any change in the actual control requirements for surge control vessels and bottoms receivers.

''Thermoplastic Product Process Unit (TPPU)''. The EPA is proposing changes to this definition to resolve several concerns. Because the terms ''pipes'' and ''ducts,'' which were used in the promulgated version of this rule were undefined, the EPA has refined the terminology, to use the terms ''hard-piping'' and ''duct work.'' The proposed amendments now cross-reference the definitions of ''hard-piping'' and ''duct work'' in §§ 63.111 and 63.161, respectively. New language has also been added to clarify that utilities and other non-process lines are not considered to be part of the TPPU.

E. Emission Standards—Proposed Changes to §§ 63.483 and 63.1313

Sections 63.483(b) and 63.1313(b). The text that is proposed to be added at §§ 63.483(b) and 63.1313(b) is based on the amended HON text in § 63.112(e)(3). The proposed revisions to §§ 63.483 and 63.1313 offer guidance to owners and operators on how to handle combined emission streams from any variety of sources. The main difference between the amended HON text at § 63.112(e)(3) and the proposed text for §§ 63.483(b) and 63.1313(b) is that the text proposed in this notice includes specific provisions pertaining to instances in which the combined emission streams include streams from continuous process vents *and* batch process vents, or batch process vents but not continuous process vents.

As noted above, these provisions offer guidance on how to comply for combined streams from different types of emission points. With the exception of combined streams containing batch process vent streams, the options are to comply with the individual requirements for each type of emission stream in the combined stream, or to comply with the most stringent requirement for any stream in the combined stream. The requirements are listed in order of stringency as follows: (1) Group 1 continuous process vent requirements, (2) Group 1 storage vessel requirements, (3) waste management unit control requirements, (4) closed vent system control requirements for in-process equipment, and (5) aggregate batch vent stream requirements.

Due to the unique nature of batch unit operations, this approach is not used for combined streams containing batch process vent streams but no continuous process vent streams. Except when combined with continuous process vent streams, compliance must be demonstrated with the batch process vent requirements in §§ 63.486 through 63.492 and §§ 63.1321 through 63.1327 for the portion of the combined stream from the batch process vent. If a batch process vent stream is combined with a continuous process vent stream, compliance may be achieved by complying with the Group 1 continuous process vent requirements. Because the first ''applicable'' set of requirements listed under proposed §§ 63.483(b)(2) and 63.1313(b)(2) for a combined stream containing both continuous and batch process vent streams is the set of requirements for continuous process vents (in §§ 63.485 and 63.1315), a combined stream containing both types of streams would be subject to the proposed requirements in §§ 63.485(o) and 63.1315(a)(13), which list the requirements for such a combined stream.

Sections 63.483(c) and 63.1313(c). The EPA is proposing to make small edits to these paragraphs, to incorporate terminology changes related to the amended HON wastewater provisions, and to clarify that restrictions related to which emission points may be included in an emissions average are discussed in a different section of the rule (i.e., §§ 63.503(a)(1) and 63.1332(a)(1)).

F. Storage Vessel Provisions—Proposed Changes to §§ 63.484 and 63.1314

1. Changes Common to Polymers and Resins I and IV

Sections 63.484(g), (h), (m), (o), (p), and (q); and 63.1314(a)(5) and (a)(6). The EPA is proposing minor wording changes to these paragraphs to clarify the intent of the paragraphs and for the sake of consistency between subpart U and subpart JJJ.

Sections 63.484(i), 63.1314(a)(7), and Promulgated 63.1314(a)(15). The EPA has realized that promulgated § 63.1314(a)(15) contradicted promulgated § 63.1314(a)(7), and so proposes to remove the paragraph promulgated as § 63.1314(a)(15). In addition, the EPA is proposing to edit §§ 63.484(i) and 63.1314(a)(7) to state that if a performance test is required in or *acceptable* under the continuous process vent requirements, the batch process vent requirements, and/or the wastewater provisions in subpart U or JJJ, that performance test may also be used to show compliance with the storage vessel provisions in § 63.119(e), as required under §§ 63.485 and 63.1315.

Sections 63.484(j) and 63.1314(a)(8). The EPA is proposing changes to this paragraph to clarify the intent of the paragraph and avoid overlap with other requirements in subparts U and JJJ, and in subpart G of the HON.

Sections 63.484(k) and (l) and 63.1314(a)(9) and (10). The EPA is proposing to add these paragraphs to reflect a change to §§ 63.506(e)(5)(ii) and 63.1335(e)(5)(ii), clarifying the differences in recordkeeping and reporting requirements for owners and operators of storage vessels that are required to continuously monitor storage vessel control device parameter levels, and those for owners and operators that are not required to continuously monitor storage vessel control device parameter levels.

Promulgated §§ 63.484(n) and 63.1314(a)(12). The EPA is proposing to remove these paragraphs with these amendments, because they are no longer pertinent, due to the promulgated HON amendments. Neither the Implementation Plan nor § 63.151(c) are mentioned in the amended sections of §§ 63.119 through 63.123.

Sections 63.484(r) and 63.1314(a)(16). The proposed changes to these paragraphs represent a correction and clarification with regard to compliance dates for storage vessels, as they are referred to in the HON (subpart G).

Sections 63.484(s) and 63.1314(a)(17). The EPA is proposing to add these paragraphs because, in their promulgated form, both subpart U and subpart JJJ referred to § 63.11(b) for determining compliance with the flare requirements. However, § 63.11(b) did not actually require a compliance demonstration. To remedy this situation, the EPA is proposing to add a requirement to perform the compliance demonstration for flares to §§ 63.504(c) and 63.1333(e). The proposed paragraphs to be added at §§ 63.484(s) and 63.1314(a)(17) replace the HON reference to § 63.11(b) with a reference to the provisions in §§ 63.504(c) and 63.1333(e).

2. Changes Unique to Polymers and Resins I

Section 63.484(a). The EPA is proposing to amend this paragraph to

make the language parallel with that in § 63.1314(a), to avoid confusion due to unintended differences in the language in subpart JJJ and the language in subpart U, and to update outdated cross-references.

Section 63.484(b)(2). The EPA is proposing to amend this paragraph to clarify that storage vessels containing ''other'' latex products, as the promulgated language stated, was intended to mean latex products other than styrene-butadiene latex.

G. Continuous Process Vent Provisions—Proposed Changes to §§ 63.485 and 63.1315

1. Changes Common to Polymers and Resins I and IV

Sections 63.485(a) and 63.1315(a). The proposed changes to these two paragraphs are intended to make the language in § 63.1315(a) more consistent with the language in § 63.485(a), and to clarify the intended meaning of both paragraphs.

Sections 63.485(k) and 63.1315(a)(9). The EPA is proposing to restructure these two paragraphs to more clearly express the parameter monitoring requirements and reporting requirements associated with continuous process vents.

Sections 63.485(l) and 63.1315(a)(10). The EPA is proposing several changes to these paragraphs. In §§ 63.485(l) and 63.1315(a)(10), changes are being proposed that would make subparts U and JJJ more consistent with the HON requirements for process vents (in §§ 63.113 through 63.118). At promulgation, the EPA had inadvertently neglected to include a provision in subparts U and JJJ that was similar to the provision in § 63.118(k). The proposed addition of paragraphs §§ 63.485(l)(5) and 63.1315(a)(10)(v) makes subparts U and JJJ consistent with the HON by adding paragraphs that are parallel in meaning to § 63.118(k), which exempts owners and operators from the requirement to submit a report of a process change in certain situations (e.g., if the vent stream flow rate is recalculated as being less than 0.005 standard cubic meter per minute). The EPA is also requesting comments on the idea of incorporating a similar paragraph as § 63.1425(f)(7)(v) into subpart PPP, the Polyether Polyols Production NESHAP.

In addition, as is explained more fully in Section R.1 below, the EPA is proposing to remove the concept of submitting compliance schedules throughout subparts U and JJJ. Accordingly, the EPA is proposing to remove the promulgated requirement to submit compliance schedules after process changes to continuous process vents, as discussed in §§ 63.485(l) and 63.1315(a)(10). The proposed amendments to these sections simply require that a description of the process change be submitted within 180 days after the process change is made or with the next Periodic Report, whichever is later.

Sections 63.485(m) and (n); and 63.1315(a)(12) and (15). The EPA is proposing to add these paragraphs to provide new exceptions from the requirement to comply with the provisions in §§ 63.113 through 63.118, due to new references contained in §§ 63.113 through 63.118 (i.e., references to HON organic HAP tables, and references to HON recordkeeping and reporting requirements), which are inappropriate for subparts U and JJJ.

Sections 63.485(o) and (p); and 63.1315(a)(13) and (14). Under §§ 63.485(o) and (p) and 63.1315(a)(13) and (14), the EPA is proposing to amend the requirements that were promulgated as §§ 63.485(m) and (n) and 63.1315(a)(10)(i) and (ii), to better specify what is meant by ''maximum representative operating conditions,'' and to clarify where (in the process) testing should be done. The proposed paragraphs explain that maximum representative operating conditions do not: (1) Include situations that would cause damage to equipment; (2) necessitate that the owner or operator make product that does not meet an existing specification for sale to a customer; or (3) necessitate that the owner or operator make product in excess of demand. The EPA is also proposing to add general performance testing requirements that include these exceptions in §§ 63.504(a) and 63.1333(a), as will be discussed in greater detail in Section O.1. below.

The EPA is also proposing to include regulatory language that specifies the period of operations that must be considered when calculating a TRE index value. The TRE index value must be calculated during periods when one or more batch emission episodes are occurring that result in the highest organic HAP emission rate (in the combined vent stream that is being routed to the recovery device) that is achievable during that 6 month period. For the purposes of determining the batch emission episode that results in the highest HAP emission rate, the owner or operator is limited to considering batch emission episodes that occur during the 6-month period that begins 3 months before and ends 3 months after the owner or operator conducts the TRE index value calculation.

With this proposed rulemaking, the EPA has added specific provisions for combined vent streams, in §§ 63.485(o)(1), (3), (4), and (p) and in 63.1315(a)(13)(i), (iii), (iv), and (a)(14). The proposed amendments in §§ 63.485(o)(1) and 63.1315(a)(13)(i) would allow owners and operators of batch process vents or aggregate batch vent streams that are combined with a Group 1 continuous process vent stream prior to a control device to either comply with the provisions in §§ 63.113 through 63.118 for Group 1 process vents, or comply with the provisions in §§ 63.483(b)(1) and 63.1313(b)(1).

The proposed text that is contained in §§ 63.485(p) and 63.1315(a)(14) pertains to a combined vent stream that is made up of a stream from outside of the affected source and a continuous process vent stream, if the two streams are normally conducted through the same final recovery device.

Sections 63.485(u) and 63.1315(a)(17). The EPA is proposing the addition of these paragraphs, so that it is clear that the proposed performance test requirements for flares (contained in §§ 63.504(c) and 63.1333(e)) apply. The proposed language in §§ 63.504(c) and 63.1333(e) specify the requirements from § 63.11(b) that apply to subpart U and JJJ affected sources. Section O.1. below provides further rationale pertinent to this change.

Promulgated §§ 63.485(s) and 63.1315(a)(14). The EPA is proposing to remove these paragraphs, which are no longer needed, because the same exemptions are allowed under § 63.116(b), as amended at promulgation.

2. Changes Unique to Polymers and Resins I

Section 63.485(a) through (j). The changes that the EPA is proposing to these paragraphs are clarifications and cross-reference updates. For example, in § 63.485(f), the EPA is proposing to add the parenthetical ''(i.e., the proposal date for subpart G of this part),'' after ''December 31, 1992,'' in order to explain the significance and origin of that particular date. The proposed version of § 63.481(f) states that when § 63.113 refers to December 31, 1992, ''June 12, 1995'' (the proposal date of subpart U) will instead apply to subpart U affected sources.

Proposed § 63.485(q). Based on an analysis conducted on the production of elastomers in gas-phased processes, the EPA reached three primary conclusions that impact proposed § 63.485(q). First, the production of *any elastomer product*

produced in a gas-phased reaction process, as opposed to only the production of ethylene propylene rubber, should be exempt from the requirements to control hydrogen halides and halogens from outlet combustion devices. This change is addressed in the proposed amendments to § 63.485(q)(2). Second, the production of elastomer products in a gas-phased reaction process should be treated as a separate subcategory, as there are technical differences impacting HAP emissions and emission control devices between the gas-phased reaction process and other elastomer production processes.

Finally, the EPA determined that the exemption from the requirement to control halogens from the outlet of control devices at gas-phased reaction elastomer production processes represented the MACT floor level of control for new and existing sources (see Docket item no. XX–XX–XX, Docket Number A–92–44, for more information). The EPA also evaluated the more stringent option of requiring the control of halogens from the outlet of control devices, and found that the costs per unit of HAP emission reduction (i.e., cost effectiveness) of this option were higher than generally considered reasonable by the EPA. Therefore, § 63.485(q) has been restructured to incorporate these decisions.

Proposed § 63.485(r) and (t). The EPA is proposing minor wording, cross-reference, and clarifying changes to these paragraphs.

Proposed § 63.485(s)(3) through (s)(6). The EPA is proposing a change to this paragraph that clarifies that the internal combustion engine must be running at all times when organic HAP emissions are being routed to it. The promulgated paragraph described the monitoring requirements when using an internal combustion engine as a control device for a continuous front-end process vent, but did not describe the compliance requirements for that situation.

3. Changes Unique to Polymers and Resins IV

Section 63.1315(e). The EPA is proposing to add this paragraph to implement requirements for acrylonitrile butadiene styrene resin/alpha methyl styrene acrylonitrile resin (ASA/AMSAN) affected sources. These requirements were discussed in the preambles to the proposed and promulgated rules but were inadvertently omitted from the regulatory text. This paragraph requires that owners or operators reduce organic HAP emissions from each continuous process vent, each batch process vent, and each aggregate batch vent stream by 98 weight-percent.

H. PET and Polystyrene Affected Sources—§§ 63.1316 Through 63.1320 (Polymers and Resins IV Only)

The proposed amendments contain four fundamental changes to the provisions for temperature limits for final condensers. First, the proposed amendments change the temperature limit for final condensers from a parameter monitoring type of limit to an emission limit (i.e., violations of the temperature limit are violations of the emission limitation, not violations of a monitoring limit). Second, the proposed amendments remove requirements for an initial performance test and parameter monitoring of the condenser outlet temperature and require continuous compliance with the daily average temperature for the condenser outlet. Third, the 6°C (10°F) window that allowed the average temperature to be 6°C (10°F) warmer than the specified emission limit has been removed. Fourth, the averaging period has been changed from a 3-hour period to a 24-hour period. The paragraphs below describe these and other changes (and the EPA's rationale for those changes) to the provisions contained in §§ 63.1316 through 63.1320.

Section 63.1316(a). Poly(ethylene terephthalate) resin (PET) and polystyrene affected sources are considered to be either batch or continuous processes. An affected source is defined as batch or continuous based on the mode of the reactors. That is, if the reactor is operated in a batch mode, then the entire process is classified as a batch process, even if there are continuous unit operations elsewhere within the process unit. The proposed language in § 63.1316(a) is intended to clarify two points. First, §§ 63.1316 through 63.1320 are only applicable to process vents at affected sources producing PET and polystyrene in continuous processes (i.e., a process where the reactors are operated in a continuous mode). Second, the proposed revision clarifies that affected sources producing either PET or polystyrene using a batch process (i.e., a process where the reactors are operated in a batch mode) are to comply with the provisions in § 63.1315 for process vents from continuous unit operations within the process and the provisions in §§ 63.1321 through 63.1327 for process vents from batch unit operations within the process.

As part of these changes, the phrase ''continuous process'' has been removed from the titles for §§ 63.1316 through 63.1320. The EPA judged that inclusion of this phrase could mislead readers to believe that there was a corresponding set of provisions that addressed PET and polystyrene affected sources using a batch process. The changes discussed above indicate that affected sources using a continuous process and those using a batch process are addressed by these provisions (i.e., §§ 63.1316 through 63.1320).

Section 63.1316(b) and (c). The proposed language in these paragraphs is intended to clarify that compliance with 40 CFR, subpart DDD, is not a violation, but that compliance with subpart JJJ is required. Another clarifying change that the EPA is proposing is to replace the phrase ''each owner or operator'' with the phrase ''the owner or operator,'' (or an equivalent phrase) to eliminate the possible misinterpretation that more than one owner or operator at a single affected source would have to illustrate compliance with the requirements of subpart JJJ. A similar change is being proposed in various places throughout both subparts U and JJJ.

Section 63.1316(b)(1)(i). This paragraph was reorganized and rewritten to clarify the intended meaning. In addition, a reference to § 63.1318(b) was added to improve the clarity of this paragraph.

Section 63.1316(b)(1)(i)(A), (b)(1)(ii), (b)(2)(i), (b)(2)(ii), and (c)(1)(i). The proposed language in these paragraphs is intended to clarify that an owner or operator may either meet the specified emission limit for each individual process section (e.g., material recovery section or polymerization reaction section) independently or may meet the specified emission limit for the collection of that type of process section (e.g., material recovery section or polymerization reaction section) within the affected source (as a group).

Section 63.1316(b)(1)(i)(B) and (c)(1)(ii). The proposed language in these paragraphs specifies that the averaging period for the temperature limit is a 24-hour period. The promulgated paragraph was not specific, but a 3-hour averaging period was implied. The EPA has determined that a 3-hour averaging period is inconsistent with other provisions of the rule which require compliance on a daily average basis. The EPA has judged that adding to the consistency of the provisions by having 24-hour averaging periods throughout the rule will benefit both the Agency and the regulated community. The EPA believes that little loss in stringency will result from changing from a 3-hour averaging period to a daily (i.e., 24 hour) average.

The EPA is also proposing to add a citation to § 63.1318(d), in order to clarify that the daily average shall be maintained according to the provisions of § 63.1318(d). The proposed provisions in § 63.1318(d) reference other proposed provisions in subpart JJJ that specify how the daily average is to be determined, and that clarify that values recorded during periods of start-up, shutdown, and malfunction are not to be included in the determination of the daily average.

Section 63.1316(b)(1)(iii), (b)(1)(iv), (b)(2)(iii), (b)(2)(iv), (c)(1), and (c)(3). These paragraphs were reorganized and rewritten to clarify the intended meaning.

Section 63.1316(c)(1)(iii)(A). The EPA is proposing to amend the language in § 63.1316(c)(1)(iii)(A), which, as promulgated, provides owners and operators of polystyrene affected sources with the option of reducing emissions from continuous process vents in the collection of material recovery sections by 98 weight percent or to an outlet concentration of 20 parts per million by volume. The proposed amendment clarifies that the use of a combustion device (including, but not limited to, thermal incinerators, catalytic incinerators, boilers, or process heaters) is required when choosing this compliance option. The regulation as promulgated already provided an owner or operator with the flexibility to use any type of efficient recovery device to comply with § 63.1316(c)(1)(i). Unless the proposed clarifying amendment to § 63.1316(c)(1)(iii)(A) is made to specify that the 98 percent/20 ppmv option must be met using combustion devices only, this option could inappropriately be used to demonstrate compliance through the use of relatively inefficient recovery devices, since the inlet location for performance testing is not specified.

Section 63.1317. The proposed language in this section changes the requirements for monitoring the condenser exit temperature from a 3-hour averaging period to a daily (i.e., 24-hour average). This change is accomplished by removing promulgated paragraph (b). This section, as proposed, references the monitoring provisions for continuous process vents which are being proposed to specify that monitoring averages are based on a 24-hour averaging period.

Section 63.1317, 63.1318(a), 63.1319(a), and 63.1320(a). The proposed language in these paragraphs is intended to clarify that the references to group determinations and TRE determinations do not apply to owners and operators under these paragraphs.

Section 63.1318(b)(1)(i). The proposed language in this paragraph is intended to clarify that the location of the sampling point to be used for determining the mass emission rate is after the last recovery or control device.

Section 63.1318(d). The proposed language in this section changes the requirements for demonstrating compliance with the temperature limits for final condensers. The promulgated rule required a performance test to demonstrate initial compliance and required monitoring of the condenser outlet temperature using a 3-hour averaging period. An exceedance of the temperature limit was considered to be an exceedance of the monitoring provisions (similar to having a daily average that was above the maximum or below the minimum level for parameter monitoring). The promulgated rule also provided a 6°C (10°F) window that allowed the 3-hour average to be 6°C (10°F) warmer than the specified emission limit. The EPA is proposing to eliminate these three concepts with these amendments, for the reasons explained below.

The provisions in §§ 63.1316 through 63.1320 are based on the provisions from the Standards of Performance for VOC Emissions from the Polymers Manufacturing Industry (40 CFR part 60, subpart DDD). At initial proposal and promulgation of subpart JJJ of this part, the EPA made an error in incorporating the Standards of Performance for VOC Emissions from the Polymers Manufacturing Industry, and the proposed changes in these amendments are meant to correct that error. The Standards of Performance for VOC Emissions from the Polymers Manufacturing Industry specify that the condenser temperature limit is an emission limitation, in that a 3-hour average temperature greater than the specified temperature limit is a violation of the emission limit. In the promulgated rule, the EPA mistakenly required monitoring (in § 63.1318(d)(1)) that more closely paralleled the parameter monitoring required in § 63.1334 than it paralleled the Standards of Performance for VOC Emissions from the Polymers Manufacturing Industry. The Standards of Performance for VOC Emissions from the Polymers Manufacturing Industry do not require a performance test or establishment of a monitoring level because the condenser temperature limit is an emission limit. The Standards of Performance for VOC Emissions from the Polymers Manufacturing Industry also do not allow for the 6°C (10° F) temperature window that subpart JJJ allowed (by allowing the 3-hour average to be 6°C (10°F) warmer than the specified emission limitation). A temperature window is included in the Standards of Performance for VOC Emissions from the Polymers Manufacturing Industry, but it applies only when an owner or operator is using a condenser as a control device to meet a percent reduction requirement. Because the Standards of Performance for VOC Emissions from the Polymers Manufacturing Industry level of control was found to be the MACT floor, the changes described above make the provisions in §§ 63.1316 through 63.1320 consistent with the MACT floor.

Finally, the EPA is also proposing to change the continuous compliance demonstration averaging period from a 3-hour period to a 24-hour period in § 63.1318(d). As previously discussed in this preamble, the EPA is proposing this change to be consistent with other provisions of the rule which require compliance on a daily average basis.

Section 63.1319(b). The proposed changes to § 63.1319(b) are intended to clarify that this paragraph applies only to owners or operators complying with § 63.1316(b)(1)(i) (i.e., demonstrating that emissions are less than 0.12 kilogram of organic HAP per megagram of product at existing affected sources producing PET using a continuous dimethyl terephthalate process). The EPA is also proposing to remove § 63.1319(b)(2) of § 63.1319 and to renumber § 63.1319(b)(2)(ii) as § 63.1319(b)(2) as part of this change.

The proposed language in this paragraph also removes the requirement to record a list of each process variable change that may result in an increase in the mass emissions per mass product. The EPA believes that such a requirement is burdensome and unnecessary for subpart JJJ because, if changes are made that would increase mass emissions per mass product, those changes would qualify as process changes, and process changes are addressed in other sections of the rule (see 63.1310(i)(4)). Another proposed change to § 63.1319(b) is that the qualifying phrase ''up-to-date and readily accessible'' has been removed from the requirement to keep records. This qualifying phrase was redundant with the requirements of § 63.1335(d).

Section 63.1319(c). The proposed changes in § 63.1319(c) correspond to the proposed changes in § 63.1318(d) (described above). The proposed changes state that, instead of keeping records of monitoring data for each 3-hour averaging period (promulgated paragraph (c)(1)) and records of the initial performance test (promulgated

paragraph (c)(2)), the owner or operator shall keep records of the daily averages demonstrating continuous compliance.

Section 63.1320(b). The EPA is proposing to insert a parenthetical phrase, to improve the clarity of this paragraph.

Section 63.1320(b)(1) and (2). The proposed language in these paragraphs has been changed to reflect the changes made to § 63.1319(b).

Section 63.1320(b)(3). The proposed change to § 63.1320(b)(3) removes the requirement to submit a schedule for compliance, for the reasons laid out in section R.1 of this preamble.

Section 63.1320(c). The promulgated paragraph contained reporting requirements for affected sources complying with the temperature limit for final condensers based on the promulgated requirements for a performance test and parameter monitoring. The requirements of this paragraph are no longer applicable, and the EPA is proposing to ''reserve'' this paragraph.

I. Batch Process Vents—Proposed Changes to §§ 3.486 Through 63.492 and 63.1321 through 63.1327

1. Changes Common to Polymers and Resins I and IV

The proposed amendments contain changes to two fundamental parts of the batch process vent provisions: (1) the group determination procedures and (2) the batch cycle limitation. A brief outline of and rationale for the proposed amendments to the batch process vent provisions is provided below. In addition, the EPA is requesting comments, with this notice, on the EPA's intention of including similar revisions to rules modeled after the Polymers and Resins rules and/or rules that refer to the batch process vent provisions in the Polymers and Resins rules (e.g., the National Emission Standards for Hazardous Air Pollutants for Polyether Polyols Production, part 63, subpart PPP).

Batch Process Vent Group Determination. According to the proposed amendments, for each batch process vent the owner or operator must determine group status based on either (1) the expected mix of ''products'' (using the highest-HAP recipe for each product, including non-elastomer and non-thermoplastic products), or (2) annualized production of the single ''highest-HAP recipe'' considering all recipes for all products (including non-elastomer and non-thermoplastic products). The primary changes from the promulgated rules are that the proposed amendments clarify that all products (e.g., non-elastomer and non-thermoplastic products in addition to elastomer and thermoplastic products) are to be considered when the owner or operator is using either the expected mix of products or the single highest-HAP recipe option, and that the concept of ''worst-case HAP emitting product'' has been replaced with the concept of the ''highest-HAP recipe'' for a particular product or amongst a group of products.

If the expected mix option is selected for the batch process vent group determination, the emissions used for the group determination must be emissions when producing the highest-HAP recipe for each product in the expected mix of products produced by the affected source. If the single highest-HAP recipe option is selected for the batch process vent group determination, the determination is based on emissions from the annualized production of the highest-HAP recipe considering all products.

Important definitions to be added to clarify these requirements include the definitions for ''highest-HAP recipe'' and ''recipe''. ''Recipe'' is defined as a specific composition, from among the range of possible compositions that might occur within a product, and is determined by the proportions of monomers and, if present, other reactants and additives that are used to make the recipe. ''Highest-HAP recipe'' is the recipe with the highest total mass of HAP charged to the reactor. The EPA believes that determining the ''highest-HAP recipe'' is less difficult and burdensome than determining ''worst-case HAP emitting product,'' as was required at promulgation of subparts U and JJJ.

The concept of recipe has been added to distinguish between a ''recipe'' and the intended meaning of the term ''product.'' After the promulgation of subparts U and JJJ, some industry representatives interpreted the term ''product'' to mean the multiple variations of a given type of elastomer or thermoplastic. For example, a company may produce as many as 100 variations of styrene butadiene latex, where the variations could occur due to relatively minor changes (i.e., the type or amount of catalysts or additives, the ratio of monomers, etc). Some owners and operators interpreted the promulgated rules to mean that each of the 100 variations would be a different product. However, in the promulgated rule, it was the EPA's intent that owners and operators consider each of these 100 variations of styrene butadiene latex to be the same ''product.'' A revised definition of ''product'' has been included in today's proposal, in order to avoid any further confusion. The addition of the concept of ''recipe'' should further clarify the intent of the rule, and address the disconnect between the intended meaning of the term ''product'' and industry's interpretation of the term.

The EPA has determined that the promulgated process of first estimating emissions for all products produced in a unit operation, and then basing the group determination on the ''worst-case HAP emitting product'' at each individual emission point was unnecessarily burdensome. The EPA has concluded that, for a given product, the amount of HAP emitted is closely related to the amount of HAP charged to the reactor. Therefore, the EPA believes that the amount of HAP charged to the reactor is an acceptable surrogate for HAP emissions when selecting the recipe to use when performing the batch process vent group determination procedures. For batch process vents other than those at the reactor, the same recipe that was determined to be the ''highest-HAP'' recipe at the reactor is to be used when performing the group determination.

Requiring the use of the highest-HAP recipe when estimating emissions for the purposes of the group determination (instead of the ''worst-case HAP emitting product'') simplifies the group determination procedures, because an owner or operator is not required to make repetitive emission estimates to determine which product type to use when performing the group determination procedures. Instead, the revised procedures allow selection of the appropriate recipe for the purposes of the group determination based on the mass of HAP charged to the reactor, which is an objective characteristic of the recipe that is known by the owner or operator. Once the highest-HAP recipe is determined, the annual emissions for that recipe alone need to be determined and used in the batch process vent group determination procedures.

Batch Mass Input Limitation (formerly ''Batch Cycle Limitation''). The first major change that the EPA is proposing to the batch cycle limitation concept is that the units have changed from ''number of batches'' to ''mass input.'' The limitation for Group 2 batch process vents is no longer based on the number of batch ''cycles'' for the batch unit operation, but is now based on the total mass of HAP charged to the reactor or the total mass of material charged to other batch unit operations. Therefore, the name batch ''cycle'' limitation is no longer accurate. The EPA is proposing

to change the name of this limitation to ''batch mass input limitation.''

The purpose of the promulgated ''batch cycle limitation'' was to ensure that either the Group 2 batch process vent would not have annual emissions greater than 11,800 kg/yr, or that the Group 2 batch process vent would not have an annual average batch vent flow rate that exceeded its cutoff flow rate. In other words, the promulgated ''batch cycle limitation'' was intended to monitor an easily determined parameter (i.e., the number of batch cycles run) to verify that the vent did not become Group 1.

While the proposed change does not affect the purpose of the limitation (to verify that the vent does not become Group 1), it does change the basis of the limitation to a parameter that is more directly related to HAP emissions. The proposed change allows a certain amount of flexibility to owners or operators, so that they may implement manufacturing changes that may affect the number of batch cycles without affecting HAP emissions. Under the proposed amendments, larger batches or a larger number of batches may be used to produce an increased amount of product, as long as the total mass of HAP input to the reactor (or total mass of material input to other batch unit operations) does not increase beyond the established limitation. This not only allows owners and operators more operating flexibility, but produces an incentive to develop more efficient production methods.

Under the proposed amendments, the facility must determine the batch mass input limitation for each vent based on either (1) the expected mix of products (using the highest-HAP recipe for each product, and including non-elastomer products and non-thermoplastic products), or (2) annualized production of the single highest-HAP recipe considering all recipes for all products. The approach used to determine the batch mass input limitation must be the same one used in the group determination (described above), since the batch mass input limitation is intended to be a gauge for possible group changes. The emissions used when determining the batch mass input limitation for each Group 2 batch process vent must be calculated using the highest-HAP recipe for each product, if the expected mix of products option is selected, or the highest-HAP recipe considering all the recipes for all of the products, if the annualized production of the single highest-HAP recipe option is selected. The owner or operator must report the batch mass input limitation, keep records of the calculations, monitor the mass of HAP or material fed to the batch unit operation, and report the total mass of material fed to the batch unit operation each year.

There is one exemption from the proposed batch mass input limitation provisions: if the vent is Group 2 at the maximum design capacity of the process unit, then the owner or operator is exempt from the requirement to calculate a batch mass input limitation for that batch process vent (see §§ 63.487(h) and 63.1322(h)). The EPA is requesting comments on whether or not the ''maximum design capacity'' of a batch process vent is a readily definable parameter for these industries.

As opposed to the preceding explanations of proposed conceptual changes in the batch process vent requirements, the paragraphs below discuss changes to individual paragraphs or sets of paragraphs.

Sections 63.487(a)(1)(i) & (b)(1)(i), 63.1322(a)(1)(i) & (b)(1)(i), 63.491(b)(3)(ii), and 63.1326(b)(3)(ii). Flare requirements have been added to §§ 63.504(c) and 63.1333(e), to make it clear that a compliance demonstration for flares must be conducted using the provisions found in § 63.11(b), as will be explained further in Section O.1. of this preamble. Therefore, the EPA is proposing to change the reference in §§ 63.487(a)(1)(i) and (b)(1)(i) and 63.1322(a)(1)(i) and (b)(1)(i), and in §§ 63.491(b)(3)(ii) and 63.1326(b)(3)(ii) to refer owners and operators to the proposed paragraphs in §§ 63.504(c) and 63.1333(e).

Sections 63.487(b)(2) and 63.1322(b)(2). The EPA is proposing to add an alternative performance standard limit of 20 parts per million by volume (ppmv) for noncombustion control devices used to comply with the aggregate batch vent stream provisions in subparts U and JJJ. This option would be in addition to the present performance standard of 90 weight percent organic HAP reduction for each aggregate batch vent stream on a continuous basis. The addition of this lower bound concentration to the performance standard (§§ 63.487(b)(2) and 63.1322(b)(2)) will encourage the use of recovery devices, will allow for reuse of materials, and will remove an inequity between requirements for different types of control equipment. The EPA believes that dilution should not be a concern under the proposed amendments, because under most conditions there would not be significant amounts of dilution air in the aggregate batch vent stream, and that any attempts to circumvent the requirement through dilution could be easily detected. The EPA is proposing this change to the rule to provide a lower bound concentration level for use in cost effective design of control devices.

Sections 63.487(c)(1) and 63.1322(c)(1). The EPA is proposing to change the requirement to reduce ''overall emissions of hydrogen halides and halogens by 99 percent,'' to a requirement to reduce ''overall emissions of hydrogen halides and halogens by *at least* 99 percent,'' (emphasis added). There was some concern that the promulgated language could be misunderstood to mean that emission reductions greater than 99 percent would not be acceptable, and the proposed clarification is intended to eliminate such an interpretation of subparts U and JJJ. In addition, the EPA is proposing to replace the term ''control device'' when discussing the reduction of halogen emissions with the more precise term ''halogen reduction device,'' as appropriate, throughout subparts U and JJJ.

Sections 63.487(e) and 63.1322(e). The EPA is proposing to modify the structure of §§ 63.487(e) and 63.1322(e) to clarify the requirements when a batch process vent or aggregate batch vent stream is combined with a continuous process vent. The basic intent of these provisions has not changed from the promulgated rule, but the EPA believes that the proposed changes clarify this intent, which is briefly summarized below. If a batch process vent/aggregate batch vent stream is combined with a Group 1 continuous process vent prior to being routed to a combustion device, the combined vent stream is required to comply with the requirements for a Group 1 continuous vent. There are special conditions specified in §§ 63.485(o) and 63.1325(a)(13) for when performance tests are to be performed in this situation. If a batch process vent/aggregate batch vent stream is combined with a continuous process vent prior to being routed to a recovery device (i.e., before the group determination of the continuous process vent has been made), §§ 63.487(e)(1)(i) and 63.1322(e)(1)(iii) refer the owner or operator to §§ 63.485(o)(2) or 63.1325(a)(13)(ii), which specify how group determinations are conducted in this situation.

Finally, §§ 63.487(e)(2) and 63.1322(e)(2) specify the requirements when a batch process vent/aggregate batch vent stream is combined with a Group 2 continuous process vent. In this situation, the owner or operator is required to determine the group status of the batch process vent/aggregate batch vent stream prior to the

combination with the continuous vent and comply with the aggregate batch vent stream provisions in subparts U and JJJ, in accordance with the proposed paragraph at §§ 63.487(e)(2) and 63.1322(e)(2).

Sections 63.487(f) and (g) and 63.1322(f) and (g). These paragraphs reflect changes related to the batch mass input limitation discussed earlier in this section. The EPA is also proposing to add a provision which allows the owner or operator of a Group 2 batch process vent that is subject to §§ 63.487(f) and (g) or 63.1322(f) and (g) to comply with the requirements for Group 1 batch process vents, instead of establishing a batch mass input limitation.

Sections 63.487(h) and 63.1322(h). The EPA is proposing to add these provisions, which would exempt owners and operators of Group 2 batch process vents from the requirement to establish a batch mass input limitation if the emissions for the single highest-HAP recipe were used in the group determination, and, during the group determination, the owner or operator used the assumption that the batch unit operation would be operating at maximum design capacity of the EPPU for 12 months (and the results of the group determination were that the batch process vent was Group 2).

Sections 63.488(a)(1) and 63.1323(a)(1). The EPA is proposing to revise these paragraphs to reflect changes related to the group determination procedures (specifically, replacement of the worst-case HAP-emitting product with the highest-HAP recipe concept, discussed earlier in this section). In addition, the EPA is proposing several small clarifying changes.

Sections 63.488(b) and 63.1323(b). The EPA is proposing to amend and restructure this paragraph, to clarify (1) how to estimate emissions, (2) when it is appropriate to use the emission estimation equations, and (3) when it is acceptable to use other methods of estimating emissions. The EPA is also proposing text that clarifies that all standard reference will be permissible for obtaining individual component vapor pressure and molecular weights. Finally, the EPA is proposing to move regulatory language from promulgated §§ 63.488(b) and 63.1323(b) to proposed §§ 63.488(b)(9) and 63.1323(b)(9), respectively. The regulatory language that the EPA is proposing to move clarifies when it is appropriate to use Henry's Law or Raoult's Law to determine partial pressure, and is a distinct topic, best set off from the remainder of the main paragraph (b).

Sections 63.488(b)(1) through (b)(5), and 63.1323(b)(1) through (b)(5). The EPA is proposing a variety of clarifying language changes and cross-referencing corrections in these paragraphs.

Sections 63.488(b)(6) and 63.1323(b)(6). The provisions proposed under §§ 63.488(b)(6) and 63.1323(b)(6) clarify when it is acceptable for the owner or operator to use engineering assessment to estimate emissions from a batch emissions episode. At promulgation, §§ 63.488(b)(6)(ii) and 63.1323(b)(6)(ii) specified only that the emissions estimation equations would be considered inappropriate (thus allowing engineering assessment) if previous test data were available that showed a greater than 20 percent discrepancy between the test value and the estimated value, or if the owner or operator could demonstrate to the Administrator that the emissions estimations equations were inappropriate through ''any other means.'' The EPA believes that clearer guidance is warranted; therefore, the new paragraphs proposed as §§ 63.488(b)(6)(i)(A) through (C) and 63.1323(b)(6)(i)(A) through (C) provide clearer guidelines for determining when engineering assessment may be used in the place of the emissions estimation equations to estimate emissions from a batch emissions episode. For instance, under these proposed amendments, the owner or operator may use engineering assessment to estimate emissions from a batch emission episode if previous test data show more than a 20 percent discrepancy between the test value and the value estimated through use of the equations in §§ 63.488(b)(1) through (b)(4) or 63.1323(b)(1) through (b)(4). In addition, the text specifying the related reporting requirements was clarified.

Sections 63.488(d) and 63.1323(d). The EPA is proposing to clarify that the annual emissions being considered under these paragraphs are the annual emissions of total organic chemical (TOC) or organic HAP, and to clarify where and how annual emissions are determined (by cross-referencing the paragraphs that specify the correct procedures for determining annual emissions).

Sections 63.488(e), (g), and (h), and 63.1323(e), (g), and (h). As described in more detail above in the ''Definitions'' section, the EPA is proposing to replace the promulgated terms ''average flow rate'' and ''annual average flow rate'' with the terms ''average batch vent flow rate'' and ''annual average batch vent flow rate,'' throughout subparts U and JJJ, and is proposing definitions for these new terms. The new terms are used throughout §§ 63.488(e), (g), and (h), and 63.1323(e), (g), and (h), as well as in other appropriate places in the batch process vent provisions. Similarly, as described above, the EPA is proposing to define ''annual average concentration'' and ''annual average batch vent concentration'' separately in these amendments, and the new terminology is reflected in the proposed changes to §§ 63.488(e), (g), and (h), and 63.1323(e), (g), and (h).

Sections 63.488(i) and 63.1323(i). The EPA is proposing to add text to §§ 63.488(i)(1) and 63.1323(i)(1) that will help the owner or operator in distinguishing between events that are considered ''process changes'' and those that are not. The EPA is also proposing to add text that would clarify what is required once an owner or operator has determined that a process change has, or has not, occurred (e.g., redetermining the batch mass input limitation, and reporting the new batch mass input limitation, if appropriate). A provision stating that (for Group 2 batch process vents) changes that would reduce the batch mass input limitation are considered to be process changes, is also proposed to be added to §§ 63.488(i) and 63.1323(i). In addition, the EPA is proposing to add a provision in §§ 63.483(i)(1)(i) and 63.1313(i)(1)(i), stating that only changes that *increase* (as opposed to decrease) production capacity or production rate will be considered to be process changes. The proposed paragraphs §§ 63.488(i)(1)(ii) and (iii) and 63.1323(i)(1)(ii) and (iii) provide more specific examples of what would be considered to be a process change at a batch process vent, under these proposed amendments.

As mentioned above and explained more fully in Section R.1, the EPA is proposing to remove the concept of submitting compliance schedules throughout subparts U and JJJ. Accordingly, the EPA is proposing to remove the promulgated requirement to submit compliance schedules after process changes have been made to batch process vents, as discussed in §§ 63.488(i)(3)(i) and (ii), 63.1323(i)(3)(i) and (ii), and 63.492(b) and 63.1323(b).

Sections 63.489 and 63.1324. For the sake of clarity, the EPA is proposing to change the title of this section from ''Batch (front-end) process vents—monitoring requirements'' to ''Batch (front-end) process vents—monitoring equipment''. The section does not uniquely specify monitoring ''requirements'' so much as it discusses the requirements for different types of monitoring equipment.

Sections 63.489(a) and 63.1324(a). The proposed amendments to §§ 63.489(a) and 63.1324(a) incorporate

changes that originated in the HON amendments (§ 63.114(a)), and which are intended to clarify how monitoring equipment are to be operated if ''manufacturer's specifications'' do not exist or are not available. The proposed edits to §§ 63.489(a)(2) and 63.1324(a)(2) represent a clarification, specifying that it is the *daily average* of the monitored parameters that must remain above or below (as appropriate) the parameter monitoring level. The proposed changes also clarify that where exceptions (such as excused excursions) apply, the owner or operator is not in violation of the standard.

Sections 63.489(b) and 63.1324(c). The subheading of this paragraph contains a proposed change that would clarify that this paragraph addresses monitoring *equipment* for which parameters must be established, rather than providing specific monitoring parameters. The EPA is also proposing to replace the term ''flow meter'' with the more precise term ''flow measurement device,'' in §§ 63.489(b)(4)(ii) and 63.1324(c)(4)(ii) and in other places throughout subparts U and JJJ. The EPA is also proposing to add procedures for determining gas stream flow which parallel the amended HON text (§ 63.114(a)(4)(ii)(A) through (C)), in §§ 63.489(b)(4)(ii)(A) through (C) and 63.1324(c)(4)(ii)(A) through (C).

The proposed addition of §§ 63.489(b)(4)(ii)(A) through (C) and 63.1324(c)(4)(ii)(A) through (C) would constitute a correction to the requirements for continuous monitoring of gas flow entering an acid gas scrubber. In the promulgated rules, when a scrubber was used after a combustion device for halogenated streams, the owner or operator was required to use a flow meter with a continuous recorder at the scrubber inlet to measure gas flow. The EPA later received information that demonstrated that continuous monitoring of this acid gas stream would be impractical, due to the harsh conditions at the scrubber inlet. A continuous monitoring device would be expected to have a very short service life due to the combination of high temperature and corrosivity/low pH. Thus, it would be extremely costly for owners and operators to comply with the promulgated requirement for continuous monitoring of gas stream flow.

Therefore, the EPA is proposing to allow three different options for determining gas flow. Each of these options would provide sufficient data to determine a liquid/gas (L/G) ratio for use in monitoring operation of the acid gas scrubber.

The first option being proposed would allow owners or operators to determine gas flow to the scrubber by using the design blower capacity, with appropriate adjustments for pressure drop. This would provide a ''worst case'' gas flow. If the required compliance demonstration showed that a scrubber could meet the emission reduction requirements for hydrogen halides and halogens during these worst case flow conditions, the EPA anticipates that compliance would also be achieved during conditions of lower gas flow.

In the second proposed option, the EPA recognizes that some post-combustion scrubbers, regulated under RCRA requirements, are already required to determine an L/G ratio to demonstrate compliance with emission reduction requirements. The EPA is proposing that methods of determining gas flow which have been utilized to comply with pre-existing RCRA regulations should also be acceptable for the purposes of subparts U and JJJ. This proposed option also provides that a determination made before the compliance date for this rule may be used in the compliance demonstration if it is still representative.

Finally, the EPA is proposing that owners or operators may develop a gas flow determination plan. The plan would specify a reliable method for determining the gas stream flow, to provide a representative or at least a worst-case flow rate during representative operating conditions. Recordkeeping requirements would apply to these proposed provisions. The EPA believes that this performance-oriented option is necessary due to the wide variety of technologies and process configurations in existence. For example, owners and operators may utilize multiple scrubbers in series at a combustion unit, which may require a different approach to determining the gas flow than when a single scrubber is used.

Sections 63.489(b)(7) and 63.1324(c)(7). The EPA is also proposing to give the owner or operator a better idea of which parameters it is acceptable to monitor for a carbon adsorber, by replacing the term ''stream flow'' with the more precise phrase ''steam flow or nitrogen flow, or pressure (gauge or absolute),'' in §§ 63.489(b)(7) and 63.1324(c)(7) and in other places throughout subparts U and JJJ, as appropriate.

Sections 63.489(c) and 63.1324(d). The EPA is proposing to add a cross-reference to §§ 63.492(e) and 63.1327(f) (the reporting requirements for batch process vents) in addition to the references to §§ 63.506(f) and 63.1335(f) (the general recordkeeping requirements), in situations where the owner or operator is requesting to monitor alternative parameters.

Sections 63.489(d) and 63.1324(e). The EPA is proposing to remove the promulgated paragraph §§ 63.489(d)(3) and 63.1324(e)(3), because §§ 63.489(d)(1) and (d)(2) and 63.1324(e)(1) and (e)(2) provide sufficient specifications for monitoring requirements associated with bypass lines. By continuously monitoring a parameter (as discussed in §§ 63.489(d)(3) or 63.1324(e)(3)), an owner or operator is plainly taking a reading ''at least once every 15 minutes,'' which is the option given under §§ 63.489(d)(1) and 63.1324(e)(1). In addition, the EPA is proposing to change the phrase ''bypass line valve'' to ''bypass line damper or valve,'' to incorporate the concept that either a damper or valve could function as the by-pass mechanism.

Sections 63.489(e)(1), 63.1324(f)(1), 63.490(b)(3), and 63.1325(b)(3). The EPA is proposing to make a change to these paragraphs that is parallel to the change made in the amended HON (§ 63.114(e)), allowing data obtained from prior performance tests to be used, provided that the prior performance test was conducted for determining compliance with a regulation promulgated by the EPA. Further proposed requirements include the specification that the test had to have been conducted using the same Methods specified in these rules and that either no deliberate process changes have been made since the test, or the owner or operator can demonstrate that the results of the performance test reliably demonstrate compliance despite process changes.

Sections 63.489(e)(1)(ii) and 63.1324(f)(1)(ii): The EPA is proposing to amend this paragraph to clarify that the ''control efficiency requirement'' is an emission reduction of 90 percent by explicitly stating the emission reduction requirement.

Sections 63.490(a) and 63.1325(a). The EPA is proposing to refer to the flare requirements that the EPA has proposed to add at §§ 63.504(c) and 63.1333(e), to make it clear that a compliance demonstration for flares must be conducted using the provisions found in § 63.11(b), as will be explained further in Section O.1. of this preamble.

Sections 63.490(b)(3) and 63.1325(b)(3). As discussed below under ''*Sections 63.490(b)(6) and 63.1325(b)(6),*'' the proposed changes to §§ 63.490(b)(3) and 63.1325(b)(3) make these paragraphs more general, so that

they cover the situations that, at promulgation, it took two paragraphs ((b)(3) and (b)(6)) to cover. The proposed changes to §§ 63.490(b)(3) and 63.1325(b)(3) allow an owner or operator to not do a performance test for a control device for which a prior performance test was conducted for the purpose of determining compliance with another regulation promulgated by the EPA, as long as the Methods used for that performance test are the same as those required in §§ 63.490 and 63.1325, and no significant process changes have been made since the prior performance test was conducted.

Sections 63.490(b)(5) and 63.1325(b)(5). The EPA is proposing changes to these paragraphs that would clarify the original intent of the paragraph (which was that an owner or operator would be exempt from conducting a performance test on an incinerator that was in compliance with 40 CFR part 264, subpart O). In addition, the proposed changes to these paragraphs specify that owners and operators of interim-status hazardous waste incinerators are also exempt from the requirement to conduct a performance test for those incinerators.

Sections 63.490(b)(6) and 63.1325(b)(6) (promulgated). The EPA is proposing to remove §§ 63.490(b)(6) and 63.1325(b)(6), because the proposed amendments to §§ 63.490(b)(3) and 63.1325(b)(3) make the promulgated §§ 63.490(b)(6) and 63.1325(b)(6) unnecessary. Both of the promulgated paragraphs (i.e., (b)(3) and (b)(6)) discussed when results from a previously conducted performance test could be used in lieu of conducting a new performance test. At promulgation, paragraphs §§ 63.490(b)(3) and 63.1325(b)(3) were specific to tests conducted for compliance with a New Source Performance Standard, and paragraphs §§ 63.490(b)(6) and 63.1325(b)(6) addressed tests conducted for compliance with ''other subparts in 40 CFR part 60 or part 63.'' Both ideas are now expressed in §§ 63.490(b)(3) and 63.1325(b)(3), as described above. As a result of this proposed change, the EPA is also proposing to remove the text from § 63.1325(b) that discussed § 63.1325(b)(6).

Sections 63.490(c)(1)(i)(B) and 63.1325(c)(1)(i)(B). The EPA is proposing to add text to clarify that references to particulate matter in Method 1A do not apply for the purposes of subparts U and JJJ. This proposed addition verifies that Method 1A is an acceptable method for selecting sampling sites at small (less than twelve inches in diameter) pipes and ducts.

Sections 63.490(c)(1)(ii), (iii), and (v) and 63.1325(c)(1)(ii), (iii), and (v). The EPA is proposing to add text to these paragraphs to clarify the intended meaning and to reflect the use of new terminology (e.g., average batch vent concentration) that the EPA is proposing to add definitions for in §§ 63.482(b) and 63.1312(b).

Sections 63.490(d) and 63.1325(d). The proposed changes to §§ 63.490(d)(1) through (5) and 63.1325(d)(1) through (5) also reflect the use of newly defined terminology such as ''average batch vent concentration.'' In addition, the EPA is proposing to replace the term ''control device'' with the more precise term ''halogen reduction device'' in these paragraphs.

Sections 63.490(d)(3) and 63.1325(d)(3). The proposed edit to these paragraphs is a correction. The phrase ''and multiplying by 100'' needed to be added to the end of each paragraph in order for *percent* reduction to be the outcome of the procedures described in those paragraphs.

Sections 63.490(e)(2) and 63.1325(e)(2). The proposed addition of these paragraphs clarifies how the owner or operator of an aggregate batch vent stream is supposed to apply the performance testing procedures in § 63.116(c) to aggregate batch vent streams (i.e., the new paragraphs clarify that a 90 percent reduction is required, rather than the 98 percent reduction specified in § 63.116(c)(4)).

Sections 63.490(f) and 63.1325(g). These paragraphs reflect changes related to the concepts of batch mass input limitation and highest-HAP recipe, which were discussed at the beginning of this section (I.1.) as general concepts.

Sections 63.491(a) and 63.1326(a). The EPA is proposing to add language to this paragraph that refers to the proposed provisions in §§ 63.491(a)(9) and 63.1326(a)(9). The proposed provisions in §§ 63.491(a)(9) and 63.1326(a)(9) discuss the recordkeeping requirements for Group 2 batch process vents that are exempt from the batch mass input limitations, under proposed paragraphs §§ 63.487(h) and 63.1322(h).

Sections 63.491(a)(1) through (3) and 63.1326(a)(1) through (3). The EPA is proposing changes to these paragraphs, in order to be consistent with the proposed approach of using a batch mass input limitation, and the use of the ''highest-HAP recipe'' for batch process vent group determinations. These proposed approaches are discussed in more detail earlier in this Preamble. The proposed additions of §§ 63.491(a)(2)(i) and (ii) and 63.1326(a)(2)(i) and (ii) clarify that if the expected mix of products option is used for the group determination, records must be kept of the emission estimates during the production of the highest-HAP recipe for each unique product included in the expected mix, while if the single highest-HAP recipe (considering all products) option is used for the group determination, then only records of emission estimates during the production of the single highest-HAP recipe must be kept.

Sections 63.491(a)(7) & (8) and 63.1326(a)(7) & (8). With the proposed edits to these paragraphs, the EPA is proposing a recordkeeping burden reduction, in that certain group determination records would no longer be required to be kept for Group 1 batch process vents or aggregate batch vent streams that are using control devices to achieve compliance. This proposed change is consistent with many other instances in subparts U and JJJ where owners and operators are no longer ''required'' to keep records, if those records are contained in a report that has been submitted to the EPA in accordance with these subparts. The proposed reduction in the recordkeeping burden is accomplished by removing the promulgated paragraphs §§ 63.491(a)(8) and 63.1326(a)(8), and by removing the condition that the control device must be operating at all times during the batch emission episode from the recordkeeping exemption in §§ 63.491(a)(7) and 63.1326(a)(7).

In addition, the EPA is proposing to remove the requirement that these emission points already be in compliance with the Group 1 requirements in order to be exempt from the recordkeeping requirements, to avoid instances in which industry might be subject to ''double penalties'' for being out of compliance with the Group 1 requirements as well as for not having kept the group determination records. Instead, the EPA has proposed to replace the phrase ''in compliance with'' with the phrase ''subject to'' in reference to the Group 1 requirements contained in §§ 63.487(a) and (b) and 63.1322(a) and (b).

Sections 63.491(a)(9) and 63.1326(a)(9). The EPA is proposing to add new paragraphs at §§ 63.491(a)(9) and 63.1326(a)(9), describing the minimal recordkeeping requirements for Group 2 batch process vents that are exempt from the batch mass input limitation provisions. The proposed recordkeeping requirements for those emission points only require the owner or operator to maintain documentation of the maximum design capacity of the EPPU or TPPU, and of the mass of HAP or material that can be charged annually

to the batch unit operation at the maximum design capacity.

Sections 63.491(b), 63.1326(b), and elsewhere throughout both rules. The EPA is proposing to remove the phrase ''up-to-date'' from the recordkeeping requirements, because that phrase does not actually state the frequency with which records must be ''up-dated.'' The EPA believes that the regulatory text, minus the phrase ''up-to-date'', is sufficient to convey the EPA's intent, which was that the owner or operator must maintain all records that are required under these subparts.

Sections 63.491(b)(2) and 63.1326(b)(2). The EPA is proposing to amend these paragraphs to reflect the fact that the owner or operator of the batch process vent has the choice of complying with § 63.487 (a)(1) or (a)(2) for batch front-end process vents under subpart U, or of complying with § 63.1326(a)(1) or (a)(2) for batch process vents (except those being used to produce SAN) under subpart JJJ.

Sections 63.491(b)(3)(ii) and (iii); 63.1326(b)(3) (ii) and (iii); and elsewhere. The EPA is proposing to refer to the flare requirements that the EPA has proposed to add at §§ 63.504(c) and 63.1333(e), to make it clear that a compliance demonstration for flares must be conducted using the provisions found in § 63.11(b), as will be explained further in Section O.1. of this preamble.

The EPA is also proposing to clarify, throughout both rules (including in §§ 63.491(b)(3)(iii) and 63.1326(b)(3)(iii)), that only instances in which *all* pilot flames are absent (at a particular vent) must be recorded. In other words, if one pilot flame is absent, but a backup pilot flame is present at the process vent, the owner or operator need not record the incident.

Sections 63.491(d) and 63.1326(d). These paragraphs reflect changes related to the concept of batch mass input limitation, which was discussed earlier in this section.

Sections 63.491(e)(1)(i) & (ii) and 63.1326(e)(1)(i) & (ii). The EPA is proposing clarifying edits to these paragraphs, by specifying that the records described in Table 6 of subpart U and Table 7 of subpart JJJ, which list the monitoring, recordkeeping, and reporting requirements for Group 1 batch process vents, shall be ''maintained in place of continuous records (or batch cycle daily averages)'' instead of being ''kept rather than averages,'' because the word ''averages'' does not apply to all of monitored parameter values required by those tables. The language being proposed in §§ 63.491(e)(1)(i) and (ii) and 63.1326(e)(1)(i) and (ii) is now specific to the control devices listed in those paragraphs (i.e., flares and carbon adsorbers).

Sections 63.491(e)(2)(ii) and 63.1326(e)(2)(ii). The EPA is proposing to amend these paragraphs to clarify that monitoring data recorded during (1) periods of non-operation of the EPPU/TPPU (or specific portion thereof) resulting in cessation of organic HAP emissions, or (2) periods of start-up, shutdown, or malfunction, are not to be included in the computation of batch cycle daily averages. The EPA is also requesting comments on the idea of incorporating similar changes into § 63.1430(d)(2)(i) of subpart PPP, the Polyether Polyols Production NESHAP.

Sections 63.491(f) and 63.1326(f). The EPA is proposing to amend these paragraphs so that, instead of referring to the recordkeeping requirements in §§ 63.118(a) and (b), 63.491(f) and 63.1326(f) will list the appropriate recordkeeping requirements for aggregate batch vent streams. This proposed change does not alter existing requirements; rather, it simply lists the applicable provisions in subparts U and JJJ directly, rather than cross-referencing the HON provisions.

Sections 63.491(g) and 63.1326(g). The EPA is proposing to add these paragraphs, which describe the documentation requirements associated with establishing the batch mass input limitation. This proposed language replaces the promulgated language that appeared in §§ 63.490(f)(2) and 63.1325(g)(2), which described the documentation requirements accompanying the establishment of a batch cycle limitation. As an example, one difference between the promulgated provisions and those proposed under today's action include the fact that, under proposed §§ 63.491(g) and 63.1326(g), the owner or operator must identify whether or not they will be using the ''highest-HAP recipe'' to establish the batch mass input limitation, instead of having to identify whether or not they will be using the ''worst-case HAP emitting product,'' (to establish the ''batch cycle limitation'') as was required in the promulgated rule. This general change (from the ''worst-case'' concept to the ''highest-HAP'' concept) was discussed more fully at the beginning of this section of the preamble (I.1.)

Sections 63.492(a)(5) and 63.1327(a)(5). The proposed amendments include these new paragraphs, which provide reporting requirements for Group 2 batch process vents that are exempt from the batch mass input limitation provisions. As discussed earlier in this section, in order for a Group 2 batch process vent to be exempt from the batch mass input limitation provisions, the owner or operator will have had to conduct the group determination using the single highest-HAP recipe while assuming that the batch unit operation was operating at maximum design capacity for 12 months.

Sections 63.492(a)(6) and 63.1327(a)(6). The EPA is proposing to add this paragraph to clarify that the owner or operator who has chosen to use engineering assessment to estimate emissions from a batch emissions episode must submit, as part of the Notification of Compliance Status, a report stating that the criteria for being able to do so (in §§ 63.488(b)(6)(i) (A) and (B) and 63.1323(b)(6)(i) (A) and (B)) have been met.

Sections 63.492(b) and (c) and 63.1327(b), (c), and (d). These paragraphs reflect the EPA's proposal to remove all requirements related to submitting a schedule for compliance, as addressed earlier in this preamble under the discussion of proposed changes to §§ 63.480(i)(2) and 63.1310(i)(2). In addition, the text describing the submittal date of the report referenced by these paragraphs has been rewritten to clarify the intended meaning (i.e., that a description of the process change must be submitted to the Administrator within 180 days after the process change, or in the next Periodic Report, whichever is later). Finally, in paragraphs §§ 63.492(c) and 63.1327(c), the EPA is proposing to remove the requirement to submit the results of the redetermination of annual emissions, annual average batch vent flow rate, and cutoff flow rate, because the EPA has determined that this requirement represents an unnecessary reporting burden for industry.

Sections 63.492(d)(2) and 63.1327(e)(2). Sections 63.492(d) and 63.1327(e) specify the conditions under which an owner or operator is not required to submit a report of a process change. In §§ 63.492(d)(2) and 63.1327(e)(2), the EPA is proposing to add the condition that ''the batch mass input limitation does not decrease'' to the list of circumstances for which a report of a process change is not required. There may be circumstances in which a process change will not affect the group status of a batch process vent or increase emissions in excess of the cutoff, but the process change will necessitate a decrease in the batch mass input limitation. Such a decrease in the batch mass input limitation needs to be reported because compliance with the batch mass input limitation is necessary

to ensure that a Group 2 batch process vent remains a Group 2 batch process vent.

Sections 63.492(f) and 63.1327(g). The EPA is proposing changes to these paragraphs reflecting the EPA's decision that a damper could also be used as a bypass mechanism.

2. Changes Unique to Polymers and Resins I

Section 63.489(b)(4). The EPA is proposing to add the phrase ''or halogenated aggregate batch vent streams'' after the phrase ''halogenated batch front-end process vents,'' to clarify that the monitoring equipment is required whenever an incinerator, boiler, or process heater is used in concert with the combustion of emissions from either type of emission point.

Section 63.490(c)(1)(i)(D). The EPA is proposing amendatory language to this paragraph to indicate that other methods or data that have been validated according to the applicable procedures in Method 301, 40 CFR part 63, appendix A, may be used to determine the concentration of organic HAP or TOC.

Section 63.491(e)(3) & (4). The proposed amendments to these paragraphs will clarify that it is the *diversion* of flow, rather than flow itself, that the flow indicator is detecting. In addition, the EPA is proposing to remove the redundant requirement to record the ''duration'' of periods when flow is diverted away from a control device from § 63.491(e)(3). Section 63.491(e)(3) continues to require the owner or operator to maintain a record of the *times* of all diversions, from which the duration of the periods could always be calculated. The EPA is also proposing to remove text that refers to the requirements in § 63.489(d)(3) (which have been deleted in these proposed amendments) from § 63.491(e)(4).

Section 63.492(a). The phrase ''or aggregate batch vent stream'' has been added in the proposed amendments to this paragraph, to clarify that these reporting requirements apply to both owners and operators of batch front-end process vents and owners and operators of aggregate batch vent streams.

3. Changes Unique to Polymers and Resins IV

Section 63.1321(d). The EPA is proposing to add this paragraph to clarify that owners or operators producing ASA/AMSAN shall comply with paragraph § 63.1315(e), under these proposed amendments.

Section 63.1323(j). The EPA is proposing to make changes to this paragraph to implement the concept proposed in § 63.1310(i)(1)(i) that process changes are only changes that increase (as opposed to decrease) production capacity or production rate. The implementation of this concept for this paragraph is phrased as ''process changes * * * that could reasonably be expected to adversely impact the compliance status (i.e., achievement of 84 percent emission reduction).'' In addition, the cross-reference to the requirement to submit a compliance schedule has been removed from proposed § 63.1323(j)(3) and the timeframe for compliance is set by the provisions of § 63.1310(i); removal of the requirement for submission of compliance schedules is discussed more fully in Section B.1.

J. Back-end Provisions— Proposed Changes to §§ 63.493 Through 63.500 (Polymers and Resins I Only)

Section 63.493. The introductory text to the back-end provisions of subpart U has been amended slightly in this proposal, to clarify which producers are exempt from the back-end provisions. The promulgated language reads ''Owners and operators of affected sources that produce only latex products, liquid rubber products, or products in a gas-phased polymerization reaction are not subject to * * *'' The proposed language that would replace the promulgated language reads, ''Owners and operators of affected sources whose only elastomer products are latex products, liquid rubber products, or products produced in a gas-phased reaction process are not subject * * *.'' The proposed edits should clarify that this exemption applies to owners and operators of affected sources (i.e., those that produce elastomers).

Section 63.494(a). The EPA is proposing an amendment to this paragraph that will clarify the location at which the residual monomer in products must be determined, by adding a cross-reference to § 63.495(d) (which states the procedures for determining the sampling location), and by specifying that the measurement must be taken after the reactor, if the affected source does not have strippers. This latter clarification was necessary because at promulgation the rule gave no guidance as to where the sampling site for residual organic HAP should be at an affected source that did not have strippers.

Section 63.494(a)(4). At promulgation, this paragraph listed elastomer products for which there were no back-end process residual organic HAP limitations. The EPA is proposing to modify this paragraph to state that there are also no back-end process residual HAP limitations for styrene butadiene rubber produced by any process other than a solution process, polybutadiene rubber produced by any process other than a solution process, and ethylene-propylene rubber produced by any process other than a solution process.

Section 63.494(d). The EPA is proposing to add this paragraph to specify which requirements the owner or operator must follow if they are complying with the residual HAP limitations by using a flare.

Section 63.495(b)(2)(i) and (ii). The proposed amendments contain a minor change in terminology in these two paragraphs and elsewhere throughout the rule (e.g., § 63.497(a)), from ''batch (or continuous) stripping'' at promulgation, to ''a stripper operated in batch (or continuous) mode'' in the proposed amendments. As described in greater detail in Section II.D of this notice, the EPA is proposing to define the term ''stripper'' and to define the term ''stripping'' instead of the term ''stripping technology.''

Section 63.495(b)(5). The proposed amendment to this paragraph specifies that samples taken during a start-up, shutdown, or malfunction should not be included in the monthly weighted average. It is the EPA position that such samples are not ''representative'' of the back-end process for the month during which the start-up, shutdown, or malfunction occurred.

Section 63.496(b)(5)(i). The EPA is proposing to amend this paragraph in order to clarify the intended meaning of the promulgated paragraph, which was that sampling sites for inlet emissions shall be located at the exit of the back-end process unit operation, and that sampling sites for outlet emissions shall be located at the outlet of the control or recovery device.

Section 63.496(b)(5)(i)(A) and (B). The proposed edits to these paragraphs are meant to clarify that equipment in compliance with the equipment leak provisions do not constitute opportunities for emission to the atmosphere, for the purpose of these paragraphs.

Section 63.496(b)(6)(iv). The EPA is proposing a minor edit to this paragraph, so that the actual equation number (Equation 30) is explicitly mentioned, rather than implicitly referring to the equation, as the language did at promulgation.

Section 63.496(b)(7)(i). The EPA is proposing to refer to the flare requirements that the EPA has proposed

to add at § 63.504(c), to make it clear that a compliance demonstration for flares must be conducted using the provisions found in § 63.11(b), as will be explained further in Section O.1. of this preamble.

Section 63.496(b)(7)(iv). The proposed changes to this paragraph would exempt owners and operators from conducting another source test to determine the outlet organic HAP emissions from a specific control device if a performance test was conducted for determining compliance with another regulation promulgated by the EPA for the same control device. The prior performance test would have to have been conducted using the same Methods specified in subpart U, with no deliberate process changes having been made since the test. The EPA is also proposing that the owner or operator be permitted to demonstrate that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite process changes.

Section 63.496(b)(7)(vi). The EPA is proposing to add this paragraph so that there is an exemption for RCRA incinerators in addition to the promulgated exemption for RCRA boilers and process heaters (which is in § 63.496(b)(7)(v)), because there was no technical reason to offer this exemption for boilers and process heaters, but not offer it for incinerators.

Section 63.497(a)(6). For the same reasons given earlier under ''*Section 63.489(b),*'' the EPA is proposing to replace the phrase ''regeneration stream flow'' with the phrase ''regeneration steam flow, nitrogen flow, or pressure (gauge or absolute).'' This same change will be evident in several other places in the proposed amendments (e.g., in Table 6 of subpart U).

Section 63.497(c). The EPA is proposing edits to this paragraph to clarify that it is the ''daily average value'' of the parameter monitoring levels that must be within the bounds of the limit, and to clarify that this paragraph does not apply when subpart U otherwise permits a deviation from the parameter monitoring limit.

Sections 63.497(d) and (d)(3), and 63.498(d)(5)(iv). The EPA is proposing to remove promulgated § 63.497(d)(3), because § 63.497(d)(1) and (d)(2), in conjunction with § 63.498(d)(5)(iii), have been determined to cover the requirement to continuously monitor the bypass line damper or valve position in the promulgated § 63.497(d)(3), making (d)(3) redundant and unnecessary. For the same reason, the EPA is proposing to remove part of § 63.498(d)(5)(iv), and ''reserve'' § 63.498(d)(5)(iv)(B), which specified the recordkeeping requirements associated with § 63.497(d)(3).

Sections 63.498(a)(1)–(3), 63.498(d), 63.499(a)(1)–(3), and 63.499(c)(3). The EPA is proposing to remove the requirement to keep records of the information listed in § 63.498(a)(1) through (3). The information requested under § 63.498(a)(1) through (3) is readily apparent upon inspection of the facility. Further, that information is also reported to the Administrator in the Notification of Compliance Status, as is required under the proposed amendments to § 63.499(a)(1) through (3).

Similarly, the EPA is proposing to remove the requirement to keep records of the information listed in the promulgated paragraphs § 63.498(d)(2) through (4), because that information is all reported to the EPA according to other provisions of the rule (or is being proposed as a reporting requirement under § 63.499(c)(3)). In addition, a small clarifying edit is being proposed for § 63.498(d)(5)(i).

Section 63.498(d)(5)(ii)(B). The EPA is proposing to add a sentence to this paragraph, clarifying that monitoring data recorded during periods of non-operation of the EPPU (resulting in cessation of organic HAP emissions) or during periods of start-up, shutdown, or malfunction shall not be included in computing the hourly or daily averages for a control or recovery device on a back-end process. The reason for this proposed change is that the EPA believes that data recorded during those time periods are not representative of the hour or day in which the period of non-operation of the EPPU (resulting in cessation of organic HAP emissions), start-up, shutdown, or malfunction occurred.

Section 63.500(d)(2). The EPA is proposing to use the term ''shortstop agent'' rather than the term ''shortstop'' throughout this paragraph, in order to better reflect common terminology used in the elastomer production industry.

K. Process Contact Cooling Tower Provisions—Proposed Changes to § 63.1329 (Polymers and Resins IV Only)

Section 63.1329(a). The EPA is proposing to reorganize and rewrite this paragraph, to clarify its intended meaning. The intended meaning of the promulgated paragraph, and the more obvious meaning of the proposed paragraph, is that the owner or operator of a new affected PET source must comply with the new affected source requirements in § 63.1329(b), and that the owner or operator of an existing affected source that produces PET using a continuous terepthalic acid high viscosity multiple end finisher that utilizes a process contact cooling tower must comply with the existing affected source requirements in § 63.1329(c).

Section 63.1329(c). The EPA is proposing to add text to this paragraph to clarify the intended meaning. Specifically, text is being proposed that states that owners or operators complying with this paragraph § 63.1329(c) must also comply with the wastewater provisions specified in § 63.1330 for process wastewater streams sent to the process contact cooling tower.

Section 63.1329(c)(1)(i). The EPA is proposing to remove text from this paragraph that discussed violations of the standard. Compliance with the standard is discussed elsewhere in the rule and ''violations'' do not need to be discussed in this paragraph or section.

Section 63.1329(c)(1)(iii). The EPA is proposing to add definitions of the terms used in Equation 27, which were inadvertently left out at promulgation (i.e., ''CI_{95}'' and ''X_i'').

L. Wastewater Provisions— Proposed Changes to §§ 63.501 and 63.1330

1. Changes Common to Polymers and Resins I and IV

As mentioned earlier in this preamble, several cross-referencing and clarifying changes need to be made to §§ 63.501 and 63.1330 as a result of the extensive amendments to the HON wastewater provisions, which both §§ 63.501 and 63.1330 reference. For example, § 63.149 of the HON, which was formerly ''Reserved'', now contains control requirements for certain liquid streams in open systems. Because the requirements in this new section (§ 63.149) are also appropriate for subpart U and JJJ affected sources, references to the HON wastewater provisions in subparts U and JJJ were changed from ''§§ 63.131 through 63.148'' to ''§§ 63.132 through 63.147 of subpart G for each process wastewater stream originating at an affected source,'' ''§ 63.148 of subpart G for leak inspection provisions,'' and ''§ 63.149 of subpart G for equipment that is subject to § 63.149.'' Section 63.131 has been dropped from the list because it is now ''reserved'' in the HON. In addition, new ''exceptions'' were required, to reflect the promulgated amendments to the HON wastewater provisions. For subpart U, these ''exceptions'' are proposed as paragraphs § 63.501(a)(5) through (a)(13), (a)(17), (a)(18), and (a)(21) through (a)(23). For subpart JJJ, these exceptions are proposed as paragraphs § 63.1330(b)(4) through (b)(12), (b)(15), (b)(16), and (b)(20)

through (b)(22). In addition, the EPA is proposing to remove promulgated §§ 63.501(a)(3) and (a)(4) and 63.1330(b)(6) and (b)(7) because the HON requirements referenced by these paragraphs were removed as part of the revisions to the HON wastewater provisions.

Other changes to §§ 63.501 and 63.1330 include various cross-reference updates necessitated by the re-organization of the HON recordkeeping and reporting provisions, which are contained in §§ 63.151 and 63.152 of subpart G, and are referenced frequently throughout §§ 63.132 through 63.149 of subpart G. One slightly more substantive change is being proposed in §§ 63.501(a)(19) and 63.1330(b)(18), as discussed in greater detail below.

Sections 63.501(a) and 63.1330(a). For subpart U, the EPA is proposing to reorganize this paragraph to clarify its intended meaning. For subpart JJJ, the EPA is proposing to add this paragraph to clarify the organization of the section. For both rules, the EPA is proposing additions that reflect changes in the HON provisions (e.g., the addition of references to § 63.149).

Sections 63.501(a)(4) (promulgated (a)(5)) and 63.1330(b)(3) (promulgated (a)(3)). The EPA is proposing to rewrite these paragraphs to clarify their intended meaning, which is that owners and operators who are making requests to monitor alternative parameters must follow the procedures in §§ 63.506(g) and 63.1335(g), rather than the procedures in §§ 63.151(g) and 63.152(e).

Sections 63.501(a)(14) and (a)(15) and 63.1330(b)(13) and (b)(14) (promulgated (a)(4) and (a)(5)). The EPA is proposing to add text to these paragraphs to clarify the intended meaning. It appeared that there was some confusion, prior to the proposed changes being made, over whether owners and operators were required to submit reports (e.g., the Notification of Compliance Status and Periodic Reports) under both the requirements in the HON and the requirements in subpart U or JJJ. The proposed amendments clarify that the EPA only expects owners or operators of a subpart U or a subpart JJJ affected source to fulfill the reporting requirements specified in subpart U or subpart JJJ, respectively.

Sections 63.501(a)(19) and 63.1330(b)(18): Process Wastewater Streams Containing Styrene. The EPA is also proposing to add a paragraph at §§ 63.501(a)(19) and at 63.1330(b)(18), which allows process wastewater streams that contain styrene to be excluded when calculating the required mass removal (RMR) or the actual mass removal (AMR) for open or closed aerobic biological treatment processes. As part of the public comments received on the proposed rules, it was brought to the attention of the EPA that styrene can clog steam strippers, and the promulgated rules were intended to allow process wastewater streams containing styrene to be sent directly to biological treatment units, without steam stripping and without being included in the subsequent RMR and AMR calculations.

However, the promulgated rules mistakenly provided this exemption for all process wastewater streams. Therefore, in addition to presenting the concept of exempting certain process wastewater streams from RMR and AMR calculations more clearly, the proposed revisions correct the error of exempting all process wastewater streams from inclusion in the RMR and AMR calculations. The newly proposed paragraphs §§ 63.501(a)(19) and 63.1330(b)(18) also specify when a process wastewater stream is considered to contain styrene.

Sections 63.501(d) (promulgated) and 63.1330(a)(12) (promulgated). The EPA is proposing to remove these paragraphs and replace them with §§ 63.501(a)(9) and 63.1330(b)(7), respectively. The promulgated paragraphs discussed relying on the compliance dates contained in these rules instead of the compliance dates contained in the HON. The EPA believes that this provision would be less likely to be overlooked by including it earlier in the section, with all of the other ''exceptions'' to the HON wastewater requirements.

2. Changes Unique to Polymers and Resins I

Section 63.501(a)(3). The EPA is proposing to add this paragraph to correct an error in the promulgated rule. As was described in the promulgation preamble, the EPA determined that new affected sources should be subject to the same wastewater requirements as existing sources. The EPA believes that the promulgated rule was not clear about the fact that new Group I Polymers and Resins affected sources are only subject to the existing source wastewater requirements in the HON. The proposed addition of § 63.501(a)(3) clarifies the EPA's original intent, by clearly stating that Group 1 wastewater streams at new affected sources are not subject to the HON new source requirements for wastewater, and by stating that owners and operators of new affected elastomer sources must comply with the requirements for existing sources in §§ 63.132 through 63.149.

M. Equipment Leak Provisions—Proposed Changes to §§ 63.502 and 63.1331

1. Changes Common to Polymers and Resins I and IV

Sections 63.502(c) and 63.1331(a)(2). The EPA is proposing to amend these paragraphs in order to clarify that the HON compliance dates do not apply to owners and operators with regard to equipment leaks. In addition, the EPA is proposing that owners and operators should follow the provisions in §§ 63.481(e) and 63.1311(e), when requesting a compliance date extension, no matter what the emission point is (i.e., for equipment leaks as well as all other emission points).

Sections 63.502(f) and (g), and 63.1331(a)(4) and (5). The proposed changes to these paragraphs are meant to clarify the intended meaning of the promulgated paragraphs (§§ 63.502(h) and (i), and 63.1331(a)(4) and (5)), and do not constitute a significant deviation from the promulgated language. Proposed §§ 63.502(f) and 63.1331(a)(4) clearly state that the owners and operators of affected sources must submit the Notification of Compliance Status (for compliance with the equipment leak provisions) within 150 days after the sources are required to be in compliance with those equipment leak provisions, instead of within 90 days, as § 63.182(a)(2) and (c) of subpart H required. Similarly, §§ 63.502(g) and 63.1334(a)(5) state that the information that subpart H requires to be submitted in Periodic Reports (via §§ 63.182(a)(3) and (d)) must instead be submitted according to the requirements in §§ 63.506(e)(6) and 63.1335(e)(6).

Sections 63.502(h) and 63.1331(a)(10). The EPA is proposing to add these paragraphs, which reflect the amendments to § 63.100(e)(3), in order to clarify guidelines under which equipment may be aggregated, even if different administrative organizations (e.g., different companies, affiliates, departments, divisions, etc.) are responsible for the management of the equipment in question.

Section 63.502(i). The EPA is proposing to add this paragraph to clarify that only organic HAP listed on Table 5 of subpart U that are also listed on Table 9 of subpart G need to be considered when subpart H refers to Table 9 of subpart G.

Sections 63.502(k) and 63.1331(a)(13). The EPA is proposing to add paragraphs as §§ 63.502(k) and 63.1331(a)(13) which tell owners or operators what to do in the event that they are using a flare to comply with the equipment leak provisions, and need to do a compliance

demonstration for that flare. It is not anticipated that this will be a common occurrence, but the EPA decided that it was prudent to have a provision in the rule to handle this situation, in the event that it arises at a facility.

Sections 63.502(l) and 63.1331(a)(11). These proposed paragraphs refer to the definitions of ''equipment'' (for both subparts U and JJJ) and ''equipment leaks'' (subpart JJJ only) which the EPA is proposing to add in §§ 63.482 and 63.1312, in order to distinguish between the use of those terms in subparts U and JJJ and the use of those same terms in subpart H, as described in greater detail in the ''Definitions'' section above.

Sections 63.502(m) and 63.1331(a)(12). The EPA is proposing to clarify the language in § 63.1331(a)(12) by removing the word ''substitute'' (which could have multiple meanings), and is proposing to add a parallel paragraph to § 63.502(m). Both §§ 63.1331(a)(12) and 63.502(m) specify how owners and operators of subpart JJJ or U affected sources are supposed to interpret references to subparts F and I, in the HON equipment leak provisions (subpart H).

2. Changes Unique to Polymers and Resins I

The Title to § 63.502. The EPA is proposing to rename § 63.502, due to the fact that the heat exchange provisions are also contained in this section.

Section 63.502(b)(1) through (7). In these paragraphs, the EPA is proposing changes to clarify the intended meaning. First, the intent of the promulgated paragraphs was that only surge control vessels and bottoms receivers that were *dedicated* to the specified elastomer products or intermediates listed in § 63.502(b)(1) through (7) be exempt from the equipment leak provisions. The EPA did not intend that surge control vessels and bottoms receivers containing small amounts of those elastomer products or intermediates be exempt from the equipment leak provisions. Therefore, the language has been changed to exempt surge control vessels and bottoms receivers ''that receive only'' the specified material, as opposed to exempting those ''containing'' the specified material. Paragraph § 63.502(b)(2) was also further reworded to clarify that ''other latex products'' was intended to mean latex products ''other than styrene-butadiene latex.''

Section 63.502(d). In the promulgation preamble, the EPA explained that an exclusion was being added for reciprocating pumps that must leak small quantities of product to lubricate and cool the shaft and seal areas (61 FR 46923). Therefore, § 63.502(d), which states that the presence of liquids dripping from bleed ports in pumps and agitator seals in light liquid service is not to be considered a leak, was added at promulgation of subpart U. However, the EPA also intended to address other situations that occur with reciprocating pumps, but neglected to do so at promulgation. Therefore, the EPA is proposing to add exemptions from the equipment leak provisions for reciprocating pumps in heavy liquid service, and for reciprocating pumps in light liquid service, if recasting the distance piece, or reciprocating pump replacement, is required.

Section 63.502(e). The EPA is proposing to remove the promulgated § 63.502(e) because it is redundant, considering the provisions contained in § 63.481(h). The proposed § 63.502(e) was promulgated as § 63.502(g).

Section 63.502(f). The EPA is proposing to move the requirements that were promulgated under § 63.502(f) for heat exchange systems to the end of the section, in order to clarify that they are separate from the equipment leak provisions. In these proposed amendments, the heat exchange system provisions are in § 63.502(l). Other changes to these provisions are discussed in greater detail in section N.I. of this preamble.

Section 63.502(i). The EPA is proposing to add this paragraph to clarify that only organic HAP listed on Table 5 of subpart U that are also listed on Table 9 of subpart G need to be considered when subpart H refers to Table 9 of subpart G.

Section 63.502(j). The EPA is proposing to add this paragraph, which parallels the promulgated paragraph in § 63.1311(a)(8), in order to allow owners and operators the option of using Method 25A (40 CFR part 60) instead of Method 18 (40 CFR part 60) when the equipment leak provisions found in the HON specify that Method 18 (40 CFR part 60) must be used.

3. Changes Unique to Polymers and Resins IV

Section 63.1331(a)(6). The EPA is proposing to revise this paragraph to clarify its intended meaning.

Section 63.1331(a)(6)(iii) and (iv). In § 63.1331(a)(6)(iii) and (iv), the EPA is proposing to add new exceptions from the requirements in subpart H to clarify how owners and operators are expected to comply with the requirements of paragraph § 63.1331(a)(6). These additional exceptions are being proposed in order to remove contradictions concerning compliance demonstrations that were created by the promulgated rule. The EPA is also proposing to remove the promulgated paragraph § 63.1331(a)(7), because § 63.1331(a)(6)(iii) and (iv) now provide subpart JJJ specific guidance for developing an initial list of identification numbers for pumps, valves, connectors, and agitators in heavy liquid service; pressure relief devices in light liquid or heavy liquid service; and instrumentation systems.

Section 63.1331(a)(7). The EPA is proposing to add a new paragraph as § 63.1331(a)(7), to clarify that owners and operators do not need to refer to the organic HAP list in Table 9 of subpart G, as directed under § 63.166(b)(4)(i). The owner or operator only needs to assess whether or not organic HAP listed on table 6 of subpart JJJ are present and to comply with the provisions of this section for those organic HAP, except ethylene glycol (to which the provisions cited by § 63.1331(a)(7) do not apply).

Section 63.1331(a)(9). The EPA is proposing to remove this paragraph, due to the fact that the EPA is also proposing to consider surge control vessels and bottoms receivers to be subject to the equipment leak provisions. This proposed change would make subpart JJJ consistent with subpart U, with regard to how it handles surge control vessels and bottoms receivers, but it will not cause any change in the actual control requirements for surge control vessels and bottoms receivers.

Section 63.1331(b). This paragraph has been reorganized and rewritten to clarify the intended meaning.

N. Heat Exchange System Provisions—Proposed Changes to §§ 63.502(l) and 63.1328

1. Changes Common to Polymers and Resins I and IV

Sections 63.502(n)(1) through (n)(6) and 63.1328(a) through (g). The EPA is proposing to add explanations of how the requirements in § 63.104 for heat exchange systems apply to subpart U and JJJ affected sources. These proposed paragraphs, added as §§ 63.502(n)(1) through (6) and 63.1328(c) through (g), provide the specific requirements (e.g., compliance dates and reporting requirements) that are applicable to heat exchange systems subject to subpart U and subpart JJJ. In addition, proposed § 63.1328(a) has been reorganized and rewritten to clarify the intended meaning, and the EPA is proposing to add § 63.1328(b) as part of this clarification.

2. Changes Unique to Polymers and Resins I

Sections 63.502(f) and 63.502(n). As mentioned earlier, the EPA is proposing to move the promulgated paragraph § 63.502(f) to the end of § 63.502 (as § 63.502(n)) to clearly separate the heat exchange systems from the equipment leak provisions.

O. Performance Testing—Proposed Changes to §§ 63.504 and 63.1333

1. Changes Common to Polymers and Resins I and IV

Title of the Sections. The EPA is proposing to change the title of §§ 63.504 and 63.1333 to ''Additional requirements for performance testing'' because this title more accurately conveys the contents of these sections than did the promulgated title ''Additional test methods and procedures.''

Sections 63.504(a)(1) and 63.1333(a)(1). In order to account for factors that might make the ''maximum representative operating conditions'' unreasonable to achieve, the EPA is proposing to modify the concept. First, the proposed changes specify that the operating conditions must be ''achievable'' during either the 6-month period that ends two months before the Notification of Compliance Status is due, or during the 6-month period that begins 3 months before the performance test and ends 3 months after the performance test.

Second, the proposed changes specify that testing is not required under conditions that (1) would cause damage to equipment; (2) would necessitate that the owner or operator make product that does not meet an existing specification for sale to a customer; or (3) would necessitate that the owner or operator make product in excess of demand.

Sections 63.504(a)(4) and 63.1333(a)(4). The EPA is proposing to add language to these paragraphs in order to specify that the owner or operator needs to give the Administrator at least 7 days (prior to the originally scheduled performance test) notice if a performance test needs to be rescheduled. The proposed changes also allow the performance test to be rescheduled by mutual agreement between the Administrator and the owner or operator, if necessary.

Sections 63.504(a)(5) and 63.1333(a)(5). The EPA is proposing to add these paragraphs to clarify that performance tests must be conducted no later than 150 days after the applicable compliance dates. Section 63.7(a)(2)(iii) in the General Provisions provides for performance tests to be conducted ''within 180 days after the compliance date'' of a standard. However, because the Notification of Compliance Status for subparts U and JJJ is due 150 days after the compliance dates for the different emission points, giving owners and operators 180 days ''after the compliance date'' of the rules will not work under subparts U and JJJ, because that would infer that performance tests could be completed up to 30 days after the Notification of Compliance Status was due. That is not the intent; performance tests must be conducted early enough to be included in the Notification of Compliance Status, which is due 150 days after the compliance dates specified in subparts U and JJJ, according to §§ 63.506(e)(5) and 63.1335(e)(5). With these proposed amendments, the EPA is also replacing the phrase ''within 180 days after,'' which was used in the General Provisions, with the phrase ''no later than 150 days,'' because the latter phrase clarifies that the Notification of Compliance Status is due *after* the compliance date, according to subparts U and JJJ.

Sections 63.504(c) and 63.1333(e). The EPA is proposing to add these paragraphs because, in their promulgated form, both subpart U and subpart JJJ referred to § 63.11(b) for determining compliance with the flare requirements. The EPA is proposing to add §§ 63.504(c) and 63.1333(e), to make it clear that a compliance demonstration for flares must be conducted using the provisions found in § 63.11(b). Specifically, the proposed paragraphs require that the owner or operator (1) conduct a visible emission test, (2) determine the net heating value of the gas being combusted, and (3) determine the exit velocity. In each case, the provisions specify that these parameters be determined in accordance with specific paragraphs in § 63.11. Paragraphs §§ 63.504(c) and 63.1333(e) also specify that an owner or operator is not required to conduct a performance test to determine percent emission reductions or outlet organic HAP or TOC concentrations for flares. In addition, the proposed paragraphs specify that a previously conducted flare compliance demonstration may be used to demonstrate compliance, provided that no deliberate process changes have been made since the compliance demonstration, or the results of the compliance demonstration reliably demonstrate compliance despite process changes. The EPA is also requesting comments on the idea of adding similar language as § 63.1437(c) in subpart PPP, the Polyether Polyols Production NESHAP.

P. Parameter Monitoring Levels and Excursions—Proposed Changes to §§ 63.505 and 63.1334

1. Changes Common to Polymers and Resins I and IV

Sections 63.505(a) and 63.1334(a). Significant revisions to this paragraph are being proposed for a variety of reasons, having mostly to do with possible misinterpretations of the promulgated paragraphs §§ 63.505(a) and 63.1334(a). The promulgated language could be read to imply that the procedures for determining parameter monitoring levels contained in §§ 63.505(c) and (d) and 63.1334(c) and (d) were ''unapproved,'' whereas the intent of the paragraph was to specify that parameter monitoring levels established using those provisions were subject to approval by the Administrator. The proposed language in §§ 63.505(a) and 63.1334(a) is very explicit about which procedures (i.e., those contained in §§ 63.505(b), (c), or (d) or 63.1334(b), (c), or (d)) are permissible under varying circumstances. Corresponding revisions are also being proposed, to §§ 63.506(e)(3) and 63.1335(e)(3) to provide instructions on how to submit information that requires approval by the Administrator.

Sections 63.505(a)(1) and 63.1334(a)(1). As with proposed § 63.497(c), these paragraphs are being proposed to clarify that it is the ''daily average value'' of the parameter monitoring levels that must be within the bounds of the limit, and not necessarily each data point. In addition, similar to proposed § 63.497(c), these paragraphs also make clear that they do not apply when subpart U or JJJ otherwise permits a deviation from a parameter monitoring limit.

Sections 63.505(a)(2) and 63.1334(a)(2). The EPA is proposing edits to these paragraphs to clarify how the established parameter monitoring levels should be submitted to the EPA.

Sections 63.505(b) and 63.1334(b). The EPA is proposing amendments to §§ 63.505(b) and 63.1334(b) to clarify that they only apply to owners and operators who elect to establish a parameter monitoring level for a control, recovery, or recapture device based *exclusively* on parameter values measured during performance tests. The EPA is proposing to ''reserve'' §§ 63.505(b)(1) and 63.1334(b)(1), which were inconsistent with the objective of the promulgated §§ 63.506(b) and 63.1335(b), because the promulgated

§§ 63.505(b)(1) and 63.1334(b)(1) allowed the owner or operator to consider engineering assessments and/or manufacturer's recommendations in addition to measured parameter values when establishing the parameter monitoring level. Engineering assessment and/or manufacturer's recommendations may be used under §§ 63.505(c) and (d) and 63.1334(c) and (d), when appropriate, but are not permitted to be used under §§ 63.505(b) or 63.1334(b), because, as proposed, §§ 63.505(b) and 63.1334(b) provide procedures for establishing parameter monitoring levels based *exclusively* on performance tests.

The EPA is proposing to remove the promulgated paragraphs at §§ 63.505(b)(3)(i)(A) and 63.1334(b)(3)(i)(A) (which required continuous parameter monitoring when batch emission episodes are being vented to control devices), because promulgated paragraphs §§ 63.505(b)(3)(i)(A) and 63.1334(b)(3)(i)(A) are no longer necessary, in that the proposed changes to the parent paragraph, §§ 63.505(b)(3) and 63.1334(b)(3), require the owner or operator to test and record monitoring data during the ''entire episode.'' In proposed paragraphs §§ 63.505(b)(3)(i)(B) and (C) and 63.1334(b)(3)(i)(B) and (C), the EPA has added an explanatory phrase at the end of each paragraph, clarifying how maximum and minimum parameter monitoring levels are to be established.

Sections 63.505(c) and (d) and 63.1334(c) and (d). The EPA is proposing to amend §§ 63.505(c) and 63.1334(c) in an effort to clarify the original intent of the paragraph, which is that owners and operators have the option of supplementing performance tests with engineering assessments and/or manufacturer's recommendations, and are not required to conduct performance tests over the entire range of expected parameter values. Similarly, the EPA is proposing to amend §§ 63.505(d) and 63.1334(d) to clarify that these provisions apply to owners and operators who have the option of choosing, and have chosen, to establish their parameter monitoring levels based exclusively on engineering assessments and/or manufacturer's recommendations. Further, proposed changes to §§ 63.505(a) and 63.1334(a) clarify that if the owner or operator selects §§ 63.505(c) or (d), or 63.1334(c) or (d) as the means of establishing parameter monitoring levels for control, recovery, or recapture devices, the information listed in §§ 63.506(e)(3)(viii) or 63.1335(e)(3)(vii) must be included in the Precompliance Report and is subject to review by the Administrator.

Sections 63.505(f), (g)(1), and (g)(2); and 63.1334(e), (f)(1), and (f)(2). With these amendments to subparts U and JJJ, the EPA is proposing to ''reserve'' §§ 63.505(f) and 63.1334(e), while amending §§ 63.505(g) and 63.1334(f) to include all the circumstances that constitute parameter monitoring excursions. In promulgated §§ 63.505(f) and 63.1334(e), the only global compliance requirement addressed was that owners and operators shall be ''deemed out of compliance'' for each parameter monitoring excursion (except, of course, for excused excursions). The EPA believes that it is more appropriate to include this provision regarding excursions under the definition of parameter monitoring excursions that is found in §§ 63.505(g) and 63.1334(f), and has revised §§ 63.505(g) and 63.1334(f) accordingly, in these proposed amendments.

In addition to the proposed changes described above, the EPA is proposing to add paragraphs §§ 63.505(g)(1)(v)(A) through (E), 63.505(g)(2)(ii)(B)(*1*) through (*4*), 63.1334(f)(1)(v)(A) through (E), and 63.1334(f)(2)(ii)(B)(*1*) through (*4*), describing the periods that are not to be included when determining the period of control or recovery device operation. Under the proposed amendments, those periods are not to be used when determining if sufficient monitoring data are available (under the provisions of §§ 63.505(g)(1)(ii), (g)(1)(iii), or (g)(2)(ii); or 63.1334(f)(1)(ii), (f)(1)(iii), or (f)(2)(ii)) for the owner or operator to avoid having an excursion. The periods that must be omitted when determining the period of control or recovery device operation include periods of monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments; start-ups; shutdowns; malfunctions; and periods of non-operation of the affected source that result in the cessation of emissions to which the monitoring applies.

The proposed changes to §§ 63.505 and 63.1334 also incorporate changes that were made in the HON amendments to § 63.152. The HON served as a model for the requirements related to start-up, shutdown, and malfunction situations in subparts U and JJJ. The HON amendments specified that start-up, shutdown, and malfunction situations and periods of non-operation of the affected source (or portion thereof) that caused the owner or operator to be unable to collect sufficient monitoring data, or which resulted in data that would have otherwise indicated that an excursion had taken place, were not to be considered ''excursions.'' The EPA proposes to incorporate this concept into §§ 63.1334(f) and 63.505(g). In addition, the EPA is proposing to add specifications under §§ 63.505(g)(2)(ii)(A) through (D) and 63.1334(f)(2)(ii)(A) through (D), to assist the owner or operator in making the determination of whether or not monitoring data will be considered ''insufficient'' for an operating day.

The HON amendments also specified that monitoring data recorded during such periods were not to be included in any average computed under subpart G. The EPA is proposing to incorporate similar provisions into §§ 63.506(d)(7) and 63.1335(d)(7), as discussed in more detail in the preamble to the proposed HON amendments (see table 2 of this preamble). To be consistent with this stance, the EPA is proposing to add clarifying provisions under §§ 63.505(g)(2)(ii)(B)(*1*) through (*4*) and 63.1334(f)(2)(ii)(B)(*1*) through (*4*), stating that those time periods should be subtracted from the ''operating time'' used to determine whether monitoring data are sufficient.

Sections 63.505(g)(3) and 63.1334(f)(3). Because daily average values will not be meaningful in the case of storage vessels that are not required to be continuously monitored, the EPA is proposing to add §§ 63.505(g)(3) and 63.1334(f)(3), which describe what would constitute an excursion for a storage vessel that is not required to be continuously monitored (provisions for storage vessels that are required to be continuously monitored are in §§ 63.505(g)(1) and 63.1334(f)(1)). The excursion criteria listed in §§ 63.505(g)(3) and 63.1334(f)(3) depend on the monitoring criteria set out in the storage vessel's monitoring plan, and do not depend on parameters having been continuously monitored.

2. Changes Unique to Polymers and Resins I

Section 63.505(h). The change that the EPA is proposing in § 63.505(h) is to add the reminder that ''For each excursion, the owner or operator shall be deemed out of compliance with the provisions of this subpart, except as provided in paragraph (i) of this section,'' to the end of § 63.505(h), to account for the decision to ''reserve'' § 63.505(f), which, at promulgation, included the concept of excused excursions in back-end operations.

3. Changes Unique to Polymers and Resins IV

Section 63.1334(f)(4) through (7). The EPA is proposing to add these four

paragraphs to address four other events that the EPA considers to be ''excursions.'' Briefly, these proposed ''excursion'' descriptions include: (1) Instances when the mass emission rate exceeds the appropriate mass emissions per mass product at a continuous process vent complying with the mass emissions per mass product requirements in § 63.1315; (2) instances when the mass emission rate exceeds the appropriate mass emissions per mass product at a continuous process vent complying with the mass emissions per mass product requirements in § 63.1316; (3) instances when the daily average exit temperature exceeds the appropriate condenser temperature limit at a continuous process vent complying with the temperature limits for final condensers; and (4) instances when the percent reduction is less than 84 percent at a new affected source producing SAN using a batch process.

Q. General Recordkeeping and Reporting—Proposed Changes to §§ 63.506 and 63.1335

1. Changes Common to Polymers and Resins I and IV

Sections 63.506(a) and 63.1335(a). Under the changes proposed to §§ 63.506(a) and 63.1335(a), the EPA is proposing to remove the requirement for an owner or operator to maintain copies of reports, if those reports were required to be submitted to the EPA and have been submitted to the appropriate EPA Regional Office. In addition, under the proposed amendments, if the EPA Regional Office has waived the requirement for submittal of reports to the Region, the owner or operator is not required to maintain copies of those reports. These revisions are being proposed due to industry's concern that misplacing a copy of a report would be a violation, even though the report had been properly submitted to the EPA. This was not the EPA's intent.

The proposed revisions to §§ 63.506(a) and 63.1335(a) are also intended to reduce the volume of records that must be stored on-site. Industry representatives have expressed concern that on-site storage is often limited and more costly than off-site storage. Under the promulgated versions of subparts U and JJJ, the most recent 5 years of records were required to be kept, but the rules were silent on where these records could be stored. These proposed revisions would specify that at least the most recent 6 months' worth of records be stored on-site or be available within 2 hours by any means. The remaining 4 and one half years worth of records may be retained off-site, under these proposed amendments.

Sections 63.506(b)(1) and 63.1335(b)(1). The HON was silent on the issue of whether or not monitoring equipment could be ''shut off'' during a start-up, shutdown, or malfunction. The language that the EPA is proposing to add to §§ 63.506(b)(1) and 63.1335(b)(1) allows monitoring equipment to be shutdown during a start-up, shutdown, or malfunction only if the monitor would be damaged or destroyed as a result of the start-up, shutdown, or malfunction. The owner or operator may only do so, however, if they have included a provision in the Start-up, Shutdown, and Malfunction Plan, setting forth the circumstances under which monitoring equipment may be shutdown. Getting such a provision in the Start-up, Shutdown, and Malfunction Plan requires the owner or operator to submit a request, and rationale defending the request, in the Precompliance Report or in a supplement to the Precompliance Report. If the request is not denied by the Administrator within 45 days after receiving the request, it can then be incorporated into the Start-up, Shutdown, Malfunction Plan. The changes described above are contained in the proposed amendments to §§ 63.506(b)(1), (e)(3), (e)(3)(i), (e)(3)(viii), and (e)(3)(ix), and 63.1335(b)(1), (e)(3), (e)(3)(i), (e)(3)(viii), and (e)(3)(ix).

These proposed changes are meant to strike a balance between the EPA's decision to require that monitoring data be collected at all relevant times and industry's concern that valuable monitoring equipment could be damaged during a start-up, shutdown, or malfunction. The proposed changes are intended to provide protection for monitoring equipment during those periods, while providing the EPA with assurance that monitoring equipment is not being ''shut off'' indiscriminately.

Under another proposed change to §§ 63.506(b)(1) and 63.1335(b)(1), text related to incorporating the Start-up, Shutdown, and Malfunction Plan into the operating permit has been removed. Because the Start-up, Shutdown, and Malfunction Plan is meant to be a document that can be easily changed to account for new start-up, shutdown, and malfunction situations, the burden of including the plan in the operating permit (thereby requiring a modification to the operating permit to include new start-up, shutdown, and malfunction situations) was judged to be overly burdensome for subpart U and JJJ affected sources. For this reason, the EPA is proposing changes to §§ 63.506(b)(1) and 63.1335(b)(1) that require owners or operators to only keep the Start-up, Shutdown, and Malfunction Plan ''on-site,'' rather than requiring that it be ''incorporated by reference'' into the operating permit, as was done at promulgation.

Sections 63.506(b)(1)(i) and 63.1335(b)(1)(i). In these paragraphs and their subparagraphs, the EPA is proposing the addition of the concept that records of the occurrence and duration of start-up, shutdown, and malfunctions are only required if such periods result in excess emissions. Consistent with other proposed amendments discussed in this preamble, the EPA is proposing this change to reduce the recordkeeping burden upon the owner or operator of an affected source that has not experienced a violation of the rule. This change is also intended to protect the owner or operator from being subject to their Start-up, Shutdown, Malfunction plan during periods when the source is not operating. The EPA is also proposing to move the promulgated §§ 63.506(b)(1)(i)(C) to 63.506(d)(8) and 63.1335(b)(1)(i)(C) to 63.1335(d)(8), because although promulgated §§ 63.506(b)(1)(i)(C) and 63.1335(b)(1)(i)(C) contained recordkeeping requirements, they were not directly related to records that must be kept during periods of start-up, shutdown, or malfunction.

Sections 63.506(c) and 63.1335(c). The EPA is proposing to ''reserve'' these paragraphs due to the fact that all of the recordkeeping and reporting requirements that are related to subpart H of this part (equipment leaks) are now specified elsewhere in subparts U and JJJ (primarily in §§ 63.502, 63.1331, 63.506, 63.1335, table 8 of subpart U, and table 9 of subpart JJJ).

Sections 63.506(d) and 63.1335(d). In §§ 63.506(d) and 63.1335(d), the EPA is proposing to add language clarifying the recordkeeping requirements for owners and operators of storage vessels (which may or may not require continuous recordkeeping, as described in §§ 63.484(k) and 63.1314(a)(9)). Other minor edits are being proposed, to improve the clarity of the subparagraphs under §§ 63.506(d) and 63.1335(d), as explained briefly below.

Sections 63.506(d)(3) and 63.1335(d)(3). Minor edits are being proposed to improve the clarity of these paragraphs. The EPA is proposing to add the phrase ''except as specified in paragraph (d)(7) of this section'' to the requirement to calculate daily average values and batch cycle daily average values as the average of all recorded parameter values, in §§ 63.506(d)(3)(i)

and 63.1335(d)(3)(i). In addition, the EPA is proposing to add the phrase ''for purposes of determining daily average values or batch cycle daily average values of monitored parameters'' to the requirement to establish the source's ''operating day'' in §§ 63.506(d)(3)(ii) and 63.1335(d)(3)(ii).

Sections 63.506(d)(4) and (5) and 63.1335(d)(4) and (5). The EPA is proposing to ''reserve'' these two paragraphs to correct an error in the promulgated rule. In response to public comment, the EPA reduced the burden of the recordkeeping requirements described in paragraph §§ 63.506(d)(2) and 63.1335(d)(2) for the final rule by no longer requiring owners or operators to record 15-minute averages. In promulgating the final rule, the EPA failed to recognize that the promulgated change to §§ 63.506(d)(2) and 63.1335(d)(2) made §§ 63.506(d)(4) and (5) and § 63.1335(d)(4) and (d)(5) unnecessary, because §§ 63.506(d)(2) and 63.1335(d)(2) required the owner or operator to record either each measured data value or block average values for 1 hour or shorter periods calculated from all measured data values during each period. Sections 63.506(a) and 63.1335(a) describe the data retention requirements for subpart U and JJJ affected sources.

Sections 63.506(d)(6) and 63.1335(d)(6). The EPA is proposing to change the heading for paragraphs §§ 63.506(d)(6) and 63.1335(d)(6) to read ''Records required when all recorded values are within the established limits'' instead of ''Records required when all recorded values are in compliance.'' This change is proposed partly because it is not the ''recorded values'' that are in (or out of) compliance, and partly because not all periods when recorded values are outside of established limits are periods of non-compliance (for example, during excused excursions).

Sections 63.506(d)(7) and 63.1335(d)(7). The EPA is proposing to revise these paragraphs to clarify that data recorded during periods of start-up, shutdown, malfunction, or non-operation resulting in cessation of emissions are not excursions and that data recorded during those periods are not to be included in any averages under subpart U or JJJ. The EPA is also requesting comments on the idea of incorporating similar changes into § 63.1439(d)(7) of subpart PPP, the Polyether Polyols Production NESHAP.

Sections 63.506(d)(7)–(10) and 63.1335(d)(7)–(10) (promulgated). The EPA is proposing to remove the requirements that were promulgated as §§ 63.506(d)(8) through (10) and 63.1335(d)(8) through (10) to further reduce the recordkeeping burden associated with subparts U and JJJ, and (in the case of §§ 63.506(d)(9) and 63.1335(d)(9)) to remain consistent with proposed changes to §§ 63.480(b) and 63.1310(b). The concept that was formerly addressed in §§ 63.506(d)(8) and 63.1335(d)(8) is proposed to be incorporated into §§ 63.506(d)(7) and 63.1335(d)(7). The proposed amendments to §§ 63.480(b) and 63.1310(b); 63.480(f) and 63.1310(f); and 63.506(d)(9) and 63.1335(d)(9) allow owners or operators the option of providing ''documents on demand,'' in an effort to reduce the recordkeeping burden associated with subparts U and JJJ.

As discussed previously, the EPA is proposing to move a provision related to continuous monitoring system recordkeeping that was promulgated under §§ 63.506(b)(1)(i)(C) and 63.1335(b)(1)(i)(C) to 63.506(d)(8) and 63.1335(d)(8), respectively. This change is being proposed because the requirement contained in §§ 63.506(b)(1)(i)(C) and 63.1335(b)(1)(i)(C) did not belong in the section on Start-up, Shutdown, and Malfunction Plans.

Finally, the EPA is proposing to add paragraphs (§§ 63.506(d)(9) and 63.1335(d)(9)) which are modified versions of a requirement found in § 63.10(b)(2)(xii) of the General Provisions. This change is being proposed as a further measure to reduce the recordkeeping burden imposed by subparts U and JJJ on owners and operators, by overriding § 63.10(b) generally, while incorporating the necessary recordkeeping requirements from § 63.10(b) into subparts U and JJJ, and omitting those recordkeeping requirements in § 63.10(b) that are not necessary to adequately ensure compliance with subparts U and JJJ.

Sections 63.506(e) and 63.1335(e). The EPA is proposing to make promulgated §§ 63.506(e)(1) and 63.1335(e)(1) into proposed §§ 63.506(e) and 63.1335(e), and to reflect the proposed addition of Table 9 to subparts U and JJJ, which will identify all standard reports required under these subparts, in the proposed language in §§ 63.506(e) and 63.1335(e).

Sections 63.506(e)(1) and 63.1335(e)(1). The EPA is proposing to add a provision under §§ 63.506(e)(1) and 63.1335(e)(1) which would allow for the later submission of any information that is required to be included in a report under §§ 63.506(e) and 63.1335(e). The EPA believes that it is logical and fair to allow owners and operators to submit new information after the due date of a particular report, if the information was not known in time for submission in that report. Proposed paragraphs §§ 63.506(e)(1)(iii) and 63.1335(e)(1)(iii) specify the timeframes and mechanisms available to owners and operators for submitting information for later inclusion in a report.

Sections 63.506(e)(2) and 63.1335(e)(2). The EPA is proposing to edit this paragraph so that it is clear that reports only need to be submitted (for each affected source) to the Administrator at the one, appropriate address listed in § 63.13. As promulgated, §§ 63.506(e)(2) and 63.1335(e)(2) could have been interpreted to mean that all reports had to be sent to all of the addresses listed in § 63.13.

Sections 63.506(e)(3) and 63.1335(e)(3). The EPA is proposing to add two other instances (besides those promulgated) of actions that would require prior approval, to the list of items to be contained in the Precompliance Report. These additional actions include the intent to use engineering assessment (instead of the emission estimation equations) to estimate emissions from a batch emission episode (as described in §§ 63.488(b)(6)(i) and 63.1323(b)(6)(i)); and the intent to include a provision in the Start-up, Shutdown, Malfunction Plan that would allow specific monitors to cease to collect data during a start-up, shutdown, or malfunction, if those monitors would be damaged or destroyed as a result of the start-up, shutdown, or malfunction (proposed under §§ 63.506(e)(3)(viii) and 63.1335(e)(3)(viii)). The rationale for requiring these items in the Precompliance Report has been discussed previously in this Preamble (under ''*Sections 63.506(b)(1) and 63.1335(b)(1).*'')

Sections 63.506(e)(3)(i) and 63.1335(e)(3)(i). The EPA is proposing to add two provisions in paragraphs §§ 63.1335(e)(3)(i) and 63.506(e)(3)(i). The first specifies that if the Administrator does not object to a request submitted in the Precompliance Report within 45 days of receiving such a request, that request will be considered to be ''approved'' by the Administrator. This proposed change would provide a firm date by which the owner or operator would know that the requests in their Precompliance Report have been approved, and will place the burden on the EPA to review these reports and respond promptly if further information is needed. The second specifies that supplements to the Precompliance Report may be submitted. The EPA is also proposing

the addition of §§ 63.506(e)(3)(ix) and 63.1335(e)(3)(ix), to implement this change. As discussed in relation to the proposed changes to paragraphs §§ 63.506(e)(1) and 63.1335(e)(1), the EPA has determined that it is logical and fair to allow owners and operators to submit new information after the due date of a particular report, if the information was not known in time for submission in the original report.

Sections 63.506(e)(3)(ii) and 63.1335(e)(3)(ii). These proposed amendments contain a change to §§ 63.506(e)(3)(ii) and 63.1335(e)(3)(ii) to permit owners and operators to request a compliance extension (as allowed under §§ 63.481(e) or 63.1311(e)), through the Precompliance Report. This proposed change is made to provide consistency with the proposed changes to §§ 63.481(e) and 63.1311(e), which incorporate changes based on the promulgated HON amendments regarding the submittal of compliance extensions.

Sections 63.506(e)(3)(iv) and 63.1315(e)(3)(iv). The EPA proposes to simplify these paragraphs by collapsing their subparagraphs (§§ 63.506(e)(3)(iv)(A) and (B), and 63.1315(e)(3)(iv)(A) and (B)), which were largely redundant with the parent §§ 63.506(e)(3)(iv) and 63.1335(e)(3)(iv), into §§ 63.506(e)(3)(iv) and 63.1335(e)(3)(iv).

Sections 63.506(e)(3)(v) and 63.1335(e)(3)(v). Proposed changes to §§ 63.506(e)(3)(v) and 63.1335(e)(3)(v) clarify the original intent of this paragraph by rearranging the wording of the paragraph. The proposed change clarifies that the Administrator shall determine whether the alternative controls are equivalent, or not equivalent, to the controls required by the standard in accordance with § 63.6(g).

Sections 63.506(e)(3)(vii) and 63.1335(e)(3)(vii). The EPA is proposing to clarify promulgated § 63.1335(e)(3)(vii) (and to add a similar paragraph as § 63.506(e)(3)(vii)), by specifying exactly what needs to be included in the Precompliance Report if an owner or operator intends to establish parameter monitoring levels using engineering assessment and/or manufacturer's recommendations. The promulgated version of § 63.1335(e)(3)(vii) could have been misinterpreted to require the owner or operator to submit the actual parameter monitoring level, which would potentially require completion of performance tests.

Sections 63.506(e)(4) and 63.1335(e)(4). The EPA is proposing several simplifying word changes (e.g., ''must'' has been changed to ''shall'' throughout §§ 63.506(e)(4) and 63.1335(e)(4), for consistency with other sections in subparts U and JJJ) and cross-reference updates throughout §§ 63.506(e)(4) and 63.1335(e)(4). Additional proposed changes to subparagraphs under §§ 63.506(e)(4) and 63.1335(e)(4) are described below.

Sections 63.506(e)(4)(ii)(F)(4) and 63.1335(e)(4)(ii)(F)(4). The EPA is proposing to amend §§ 63.506(e)(4)(ii)(F)(*4*) and 63.1335(e)(4)(ii)(F)(*4*), by cross-referencing the requirements in §§ 63.506(e)(7)(ii) and 63.1335(e)(7)(ii), so that these paragraphs specify how the nominal efficiency is to be reported.

Sections 63.506(e)(4)(ii)(H)(1) and 63.1335(e)(4)(ii)(H)(1). The EPA is proposing to remove the reference to table 14b from the HON, because there is no longer a table 14b in the HON.

Sections 63.506(e)(5) and 63.1335(e)(5). The proposed revisions to this paragraph clarify how owners and operators are expected to handle the different ''Notification of Compliance Status'' reports that will be required for emission points with different compliance dates (such as equipment leaks subject to subpart H of the HON). In all cases, a Notification of Compliance Status is due within 150 days after any particular compliance date (or with the first Periodic Report that is due at least 150 days after the compliance date, for equipment leaks with compliance dates later than July 31, 1997).

Sections 63.506(e)(5)(i)(A) and 63.1335(e)(5)(i)(A). The EPA is proposing to amend §§ 63.506(e)(5)(i)(A) and 63.1335(e)(5)(i)(A), to clarify the phrase ''any other information.'' The proposed change makes clear that ''any other information'' only relates to information from the previous test report and that the information need only be submitted if the Administrator requests that information. This proposed change would relieve industry of the burden of trying to anticipate what ''any other information'' might mean to the EPA.

Sections 63.506(e)(5)(ii) and 63.1335(e)(5)(ii). The EPA is proposing changes to these paragraphs, in order to clarify the differences in recordkeeping and reporting requirements for owners and operators of storage vessels that have elected to conduct continuous parameter monitoring under §§ 63.505 and 63.1334, and to clarify the requirements for owners or operators that have not elected to conduct continuous parameter monitoring for their storage vessels. At promulgation, both subparts U and JJJ were unclear regarding the compliance reporting requirements for owners or operators that have not elected to conduct continuous parameter monitoring for their storage vessels (i.e., the promulgated rules provided no specific requirements for these owners and operators, aside from those that applied to owners and operators conducting continuous monitoring at their storage vessels.)

Sections 63.506(e)(5)(vii), (viii), and (ix) and 63.1335(e)(5)(vi), (vii), and (viii). The EPA is proposing to add cross-references (in §§ 63.506(e)(5)(vii) and (viii) and 63.1335(e)(5)(vi) and (vii)) to the predominant use determination procedures for storage vessels and recovery operations equipment. The proposed changes to §§ 63.506(e)(5)(ix) and 63.1335(e)(5)(viii) update the terminology (e.g., batch mass limitation) in those paragraphs to match changes proposed elsewhere in today's action.

Sections 63.506(e)(5)(x), (xi), and (xii) and 63.1335(e)(5)(ix), (x), and (xi). Proposed §§ 63.506(e)(5)(x) and 63.1335(e)(5)(ix) require owners and operators that are subject to proposed paragraphs §§ 63.481(k) or 63.1311(m) (provisions addressing overlap with other regulations for monitoring, recordkeeping, or reporting for combustion, recovery, or recapture devices) to indicate in the Notification of Compliance Status which applicable rule the owner or operator will follow for testing, monitoring, recordkeeping, and reporting requirements.

Proposed sections 63.506(e)(5)(xi) and 63.1335(e)(5)(x) specify the reporting requirements for owners and operators choosing to comply with § 63.132(g), by transferring a Group 1 wastewater stream to an off-site treatment facility, or to an on-site treatment facility that is not owned or operated by the owner or operator of the affected source.

Finally, the proposed §§ 63.506(e)(5)(xii) and 63.1335(e)(5)(xi) requires owners and operators choosing to implement the reduced recordkeeping program specified in §§ 63.506(h)(1) and 63.1335(h)(1) to notify the Administrator of their election to do so. At promulgation, no distinct reporting requirements were stated for owners and operators taking the actions described above.

Sections 63.506(e)(6) and 63.1335(e)(6). The proposed amendments to this paragraph are intended to assist owners and operators in differentiating the applicable periodic reporting requirements related to subparts U and JJJ and any other subpart which subpart U or JJJ references. Specific Periodic Reporting requirements have been added related to

equipment leaks and heat exchange systems. Further, provisions specifying that monitoring data shall be used to determine compliance for Group 1 emission points and Group 2 emission points included in emissions averages have been added to reflect the HON provisions in § 63.152(c)(2)(ii), after which these paragraphs §§ 63.506(e)(6) and 63.1335(e)(6) were modeled.

Sections 63.506(e)(6)(i) and 63.1335(e)(6)(i). These paragraphs have been changed to clarify that the EPA intended for the ''180-day period'' discussed to equate to a 6-month period. A similar change has been made in subsequent paragraphs where necessary.

Sections 63.506(e)(6)(ii) and 63.1335(e)(6)(ii). These paragraphs have been changed to clarify that the Periodic Report should state that there were no compliance exceptions, as opposed to making the general statement that the affected source was in compliance.

Sections 63.506(e)(6)(iii)(B) and (C), and 63.1335(e)(6)(iii)(B) and (C). The EPA is proposing to clarify, under §§ 63.506(e)(6)(iii)(B) and 63.1335(e)(6)(iii)(B), that for excursions caused by insufficient monitoring data, the owner or operator must include the start-time and duration of any periods when monitoring data were not collected. In addition, the EPA is proposing to ''reserve'' §§ 63.506(e)(6)(iii)(C) and 63.1335(e)(6)(iii)(C), because those paragraphs would be unnecessary and redundant, once the proposed clarification to §§ 63.506(e)(6)(iii)(B) and 63.1335(e)(6)(iii)(B) has been made.

Sections 63.506(e)(6)(iii)(D)(2) and 63.1335(e)(6)(iii)(D)(2). The first part of each of these paragraphs have been rewritten to clarify their intended meaning. The point of confusion was whether or not a report was required for every process change, even those that result in a group status change from Group 1 to Group 2. The clarification states that reports are not required for process changes that result in a group status change from Group 1 to Group 2; however, the owner or operator is required to comply with the Group 1 requirements until notification has been made that the group status has changed from Group 1 to Group 2.

In addition, as was mentioned briefly earlier in this preamble, because the Notification of Compliance Status is the report in which compliance (or non-compliance) is ultimately documented, the EPA has decided that it is not necessary for owners or operators of affected sources to submit a compliance schedule. For this reason, the EPA is proposing to remove the term ''compliance schedule'' throughout both rules (including the titles for §§ 63.481 and 63.1311), and to remove all requirements to report information in a ''compliance schedule'' throughout both rules. In particular, the owner or operator is no longer required to submit a schedule for compliance with the applicable provisions after every process change. The provisions for providing a compliance schedule have also been removed from paragraphs §§ 63.506(e)(6)(iii)(D)(*2*) and 63.1335(e)(6)(iii)(D)(*2*). However, this proposed provision does not override other regulations that might require compliance schedules (e.g., Title V requirements, the Standards of Performance for VOC Emissions from the Polymers Manufacturing Industry, or reasonably available control technology (RACT) standards).

Sections 63.506(e)(6)(iii)(D)(5) and 63.1335(e)(6)(iii)(D)(4). The EPA is proposing to add these paragraphs requiring reports of changes in the identity of treatment facilities receiving wastewater streams under § 63.132(g) of the HON.

Sections 63.506(e)(6)(iv) and 63.1335(e)(6)(iv). These paragraphs were rewritten to clarify the intended meaning. These paragraphs also reflect the change in terminology from ''batch cycle limitation'' to ''batch mass input limitation.''

Sections 63.506(e)(6)(vi) and 63.1335(e)(6)(vi). The EPA is proposing to amend these paragraphs for greater clarity and so that they are consistent with the proposed changes to §§ 63.480(f) and 63.1310(f).

Sections 63.506(e)(6)(vii) and (viii) and 63.1335(e)(6)(vii) and (viii). The EPA is proposing to amend §§ 63.506(e)(6)(vii) and (viii) and 63.1335(e)(6)(vii) and (viii) to replace the term ''belonging to'' with the term ''assigned to'' in order to reflect the changes proposed in §§ 63.480(g) and (h) and 63.1310(g) and (h).

Promulgated §§ 63.506(e)(6)(ix) and 63.1335(e)(6)(ix). The EPA is proposing to remove promulgated §§ 63.506(e)(6)(ix) and 63.1335(e)(6)(ix) to prevent any implication that two separate Periodic Reports are due, when in fact the requirement is for a single report containing information related to both equipment leak components and other emission points.

Proposed §§ 63.506(e)(6)(ix) and (x) and 63.1335(e)(6)(ix) and (x). The EPA is proposing to add §§ 63.506(e)(6)(ix) and (x) and 63.1335(e)(6)(ix) and (x) to include notification requirements already required by the promulgated rules (in §§ 63.506(h)(1) and (2) and 63.1335(h)(1) and (2)), but not previously listed under §§ 63.506(e)(6) and 63.1335(e)(6).

Proposed §§ 63.506(e)(6)(xii) and 63.1335(e)(6)(xii). The EPA is proposing to reorganize and rewrite promulgated §§ 63.506(e)(6)(xi) and 63.1335(e)(6)(xi) as §§ 63.506(e)(6)(xii) and 63.1335(e)(6)(xii). In particular, the EPA is proposing to revise §§ 63.506(e)(6)(xii)(A)(*1*) and 63.1335(e)(6)(xii)(A)(*1*), to state that quarterly reports are required if ''a control or recovery device for a particular emission point or process section'' has more excursions than the number of excused excursions, instead of stating that quarterly reports are required if ''an emission point has any excursions,'' as was done at promulgation.

In addition, the EPA is proposing to move the provision that was proposed under §§ 63.506(e)(6)(xii)(D) and 63.1335(e)(6)(xii)(D), allowing the Administrator to request quarterly reports for emission points or process sections of concern, to §§ 63.506(e)(6)(xii)(A)(*2*) and 63.1335(e)(6)(xii)(A)(*2*). The EPA is also proposing changes to §§ 63.506(e)(6)(xii)(D) and 63.1335(e)(6)(xii)(D), which clarify that, after submitting quarterly reports for one year ''without more excursions occurring (during that year) than the number of excused excursions allowed * * *'' the owner or operator may return to semiannual reporting. The proposed rule simply read ''for 1 year,'' without clarifying that if additional unexcused excursions occurred during that year, the owner or operator would again be required to submit quarterly reports for the year following those most recent, unexcused excursions.

Proposed §§ 63.506(e)(6)(xii)(E) and 63.1335(e)(6)(xii)(E). The EPA is proposing to remove promulgated §§ 63.506(e)(6)(xi)(E) and 63.1335(e)(6)(xi)(E) and to move the statement concerning the use of monitoring data to determine compliance to the introductory paragraphs §§ 63.506(e)(6) and 63.1335(e)(6), because the EPA believes that it is more appropriate to make this statement at the beginning of §§ 63.506(e)(6) and 63.1335(e)(6), than to leave it back in §§ 63.506(e)(6)(xi)(E) and 63.1335(e)(6)(xi)(E). In addition, addressing the issue of monitoring requirements in §§ 63.506(e)(6) and 63.1335(e)(6) allows the EPA to point out that owners and operators of storage vessels to which the provisions of §§ 63.505 or 63.1334 do not apply must instead comply with the requirements laid out in their own individual monitoring plans for those emission

points. The proposed rules were silent on this last point.

Sections 63.506(e)(7)(ii) and 63.1335(e)(7)(ii). The EPA is proposing to add text to §§ 63.506(e)(7)(ii) and 63.1335(e)(7)(ii), clarifying the difference between requests associated with the initial Emissions Averaging Plan and requests made after submittal of the initial Emissions Averaging Plan.

Sections 63.506(e)(7)(iv) and 63.1335(e)(7)(iii). The EPA is proposing to add these paragraphs to include a notification discussed in paragraphs §§ 63.480(f) and 63.1310(f), for owners and operators experiencing a change in primary product at an affected process unit.

Sections 63.506(e)(7)(v) and 63.1335(e)(7)(iv). The EPA is proposing to add these paragraphs to specify the report required when an EPPU/TPPU or emission point(s) is added to an existing affected source under §§ 63.480(i) and 63.1310(i). The promulgated rules did not include specific reporting requirements for such situations. At promulgation, the only reporting requirement associated with the addition of an EPPU/TPPU or an emission point was the requirement that was contained in §§ 63.480(i)(2)(iii) and 63.1310(i)(2)(iii) (both of which the EPA has proposed removing in today's action), pertaining to establishing a new compliance date for the added emission point. As explained earlier during the discussion of that proposed deletion, §§ 63.480(i)(2)(ii) and 63.1310(i)(2)(ii) now specify the compliance dates pertaining to all newly added emission points.

Sections 63.506(g)(3) and 63.1335(g)(3). The EPA is proposing to remove the parenthetical phrase ''for example, once every 15 minutes'' as it relates to records of measurement, since the term ''set frequency'' is sufficiently clear. In addition, the EPA is proposing to edit §§ 63.506(g)(3)(i)(A) and 63.1335(g)(3)(i)(A), to clarify that an operating parameter value reading (but not a record) must be taken at least once during every 15 minute period.

Sections 63.506(h) and 63.1335(h). These paragraphs have been reorganized and rewritten to clarify the intended meaning, by simplifying language, adding cross-references, and giving more specific guidance regarding the retention period for monitoring system descriptions. Changes have also been made to §§ 63.506(h)(1) and 63.1335(h)(1) pointing out that the notification required by these paragraphs must be made in the Notification of Compliance Status or in the next Periodic Report. Further, the EPA is proposing to add paragraphs §§ 63.506(h)(1)(vi)(D) and 63.1335(h)(1)(vi)(D) to describe the recordkeeping requirement for the description of the monitoring system. Under proposed §§ 63.506(h)(1)(vi)(D) and 63.1335(h)(1)(vi)(D), owners and operators are required to retain current descriptions of monitoring systems on-site, or those descriptions may be accessible from a central location by computer or other means that provides access to the description within 2 hours after a request. The proposed requirements also state that all superseded descriptions must be retained for at least 5 years after the date of their creation, although they may be stored off-site once they have been superseded by a more current description for 6 months or more.

2. Changes Unique to Polymers and Resins I

Section 63.506(d)(2). The EPA is proposing to re-structure § 63.506(d)(2) by combining the three subparagraphs into one paragraph (to reduce redundancy). In addition, the EPA is proposing to reduce the recordkeeping burden imposed by the promulgated paragraph § 63.506(d)(2)(iii), by removing the requirement to keep records of all batch cycle averages and batch emission episode averages. As long as a record of each measured data value is maintained, batch cycle averages and batch emission episode averages can always be re-calculated.

Section 63.506(e)(4)(ii)(N). The EPA is proposing to add this provision which should have been included in subpart U at promulgation, and is included in the parallel emissions averaging provisions in the HON and subpart JJJ. The proposed paragraph specifies that emissions from emission points to be included in an emissions average must not result in greater hazard or, at the option of the Administrator, greater risk to human health or the environment than those emissions from those emissions points would have created if they were not included in the emissions average. The purpose of emissions averaging is to give greater flexibility to affected sources in meeting MACT requirements. It was never intended to reduce the level of environmental protection that the standards would otherwise provide.

Section 63.506(e)(4)(iv)(C). The EPA is proposing to add another paragraph that was inadvertently left out of subpart U at promulgation. This proposed paragraph establishes the deadline for submitting an update to an Emissions Averaging Plan.

Section 63.506(e)(5)(iv). The EPA is proposing to ''reserve'' this paragraph, because the requirements in § 63.506(e)(5)(iv) were duplicative of those in § 63.506(e)(5)(ix), in that only owners of Group 2 batch front-end process vents (as opposed to Group 1 batch front-end process vents) are required to determine a limitation for batch front-end process vents.

Section 63.506(e)(6)(iii)(D)(4). The EPA is proposing this change to clarify that notification is only required if a change in the standard operating procedure required by § 63.500 has the potential for increasing the concentration of carbon disulfide in the crumb dryer exhaust.

Section 63.506(e)(7)(iii). This paragraph was rewritten to clarify the intended meaning (i.e., that compliance redetermination reports for back-end processes that have experienced a process change (as described in § 63.499(d)) are due within 180 days after the process change has occurred.)

3. Changes Unique to Polymers and Resins IV

Proposed § 63.1335(b)(1)(i)(C). The EPA is proposing to change this paragraph to be consistent with the HON, after which these provisions are modeled. At promulgation, this paragraph attempted to exempt some Group 2 emission points included in an emissions average from the requirement to keep records related to start-up, shutdown, or malfunction occurrences. However, the HON provisions do not make such a distinction, and the EPA has determined that these records are necessary for all emission points included in an emissions average. Therefore, the EPA is proposing to change this paragraph to reflect the language that appears in the HON provisions ('63.103(c)(3)), as well as in subpart U (proposed (63.506(b)(1)(i)(C)).

Section 63.1335(b)(2). The proposed change to this paragraph corrects an omission made in the promulgated rule. The change specifies that the provisions of § 63.5(d)(1)(iii) do not apply for purposes of this subpart. Section 63.5(d)(1)(iii) discusses Notification of Compliance Status requirements, and the proposed change clarifies that the provisions in this subpart are to be followed with regard to the Notification of Compliance Status.

Promulgated § 63.1335(e)(8)(ii). The EPA is proposing to remove this paragraph to correct an error in the promulgated rule, which was that the promulgated rule required the Notification of Compliance Status to be included in the operating permit application. Because the operating permit application may be submitted well before the Notification of

Compliance Status is due, and because not all of the information required to be submitted in the Notification of Compliance Status is appropriate for submittal in the operating permit application, the EPA is proposing to remove promulgated § 63.1335(e)(8)(ii).

Section 63.1335(g). The EPA is proposing to remove the phrase ''63.1314 for storage vessels'' from this paragraph because storage vessels are not always subject to continuous monitoring, as this phrase might suggest.

R. The Tables

1. Changes Common to Polymers and Resins I and IV

Table 1 of subpart U and Table 1 of subpart JJJ. The EPA is proposing several changes to these tables (which discuss the applicability of the General Provisions to subpart U and subpart JJJ affected sources) in order to clarify the applicability of the General Provisions to these subparts, giving more detail than the promulgated rule did, in many instances. The EPA is also proposing to amend these tables to recognize when the General Provisions are consistent with subparts U and JJJ. For instance, under ''63.1(a)(10),'' these tables formerly stated ''No,'' for applicability to subparts U and JJJ; however, the tables now say ''Yes,'' since the provisions in § 63.1(a)(10) are consistent with the approach taken in subparts U and JJJ. The EPA believed that it might be confusing to owners and operators to read ''No'' under this table, and yet notice that the requirements in § 63.1(a)(10) are consistent with proposed §§ 63.481(m) and 63.1311(o).

In addition, many of the changes proposed for table 1 of subpart U and table 1 of subpart JJJ are corrections. In particular, the EPA neglected to consider the equipment leak provisions in creating the promulgated version of table 1, and the proposed amendments add several exemptions and clarifications of applicability that are related to the equipment leak provisions in subparts U and JJJ. In general, the proposed changes to table 1 incorporate proposed changes to subparts U and JJJ, which have already been discussed in this preamble.

Table 6 in subpart U and Table 7 in subpart JJJ. The EPA is proposing the following changes to these tables: (1) Changing the titles to each table to include ''aggregate batch vent streams''; (2) replacing the terms ''temperature'' and ''pH'' with the term ''value,'' where temperature or pH is not the only parameter being monitored; (3) clarifying that *all* pilot flames at a particular flare must be absent in order to trigger the recordkeeping and reporting requirements in these tables; (4) including ''gas rate'' as a parameter to be monitored for scrubbers for halogenated batch process vents or aggregate batch vent streams; (5) requiring the recording and reporting of the ''liquid/gas ratio'' instead of the ''liquid flow rate'' at scrubbers for halogenated batch process vents or aggregate batch vent streams; and (5) requiring that records be kept of all ''diversions'' rather than ''flow'' and that records and reports be required for all monthly inspections that indicate that a valve was ''in the diverting position'' (rather than ''closed'') or that a seal was ''broken'' (rather than ''changed'').

Table 7 in subpart U and Table 8 of subpart JJJ. The EPA is proposing several clarifying changes and corrections to these two tables. In the proposed amendments to these tables, the proposed parameter monitoring requirements are more specific than the promulgated requirements with regard to flow rates. In particular, the EPA is proposing to replace the term ''total regeneration stream mass flow'' with the term ''total regeneration steam flow or nitrogen flow, or pressure (gauge or absolute).'' In addition, the EPA is proposing a correction under the entry for ''established operating parameters'' for absorbers, by changing ''minimum temperature and minimum specific gravity'' to ''maximum temperature and maximum specific gravity.'' Upon review of this provision, the EPA determined that the promulgated rule incorrectly called for the parameters to be ''minimums'' instead of ''maximums,'' in this instance. The EPA believes this change is necessary because the temperature and specific gravity of the absorbing liquid should be subject to a limit that ensures that the gas will be absorbed by the absorbing liquid.

Table 9 to subpart U and Table 9 to subpart JJJ. The EPA is proposing to add Table 9 to both subparts U and JJJ, to describe the routine reports required under these subparts, along with their general ''due dates.'' These tables are intended to be of assistance to owners or operators, but are not necessarily ''all-inclusive'' of every report that might be required under special circumstances under subpart U or JJJ.

2. Changes Unique to Polymers and Resins I

Table 2 of subpart U. The EPA is proposing one correction to this table. At promulgation, the table stated that §§ 63.102 through 63.109 of subpart F of the HON did not apply to subpart U. However, the promulgated rule (under § 63.502(f)) required that owners and operators comply with the requirements in § 63.104 of the HON for heat exchange systems. Because the latter more accurately represents the EPA's intent (that owners and operators of subpart U affected sources comply with the heat exchange system provisions in § 63.104), the EPA is proposing to edit table 2 to state ''yes'' for § 63.104. A few other cross-reference corrections and updates are also being proposed in this table.

Table 8 to subpart U. For the reasons described above under Section II.D of this notice, the EPA is proposing to change the term ''batch stripper'' to ''a stripper operated in batch mode,'' and to change the term ''continuous stripper'' to ''a stripper operated in continuous mode,'' in table 8 of subpart U.

3. Changes Unique to Polymers and Resins IV

Table 3 of subpart JJJ. Due to potential confusion over the promulgated version of this table, the EPA is proposing to amend it to make it clear that for Group 1 storage vessels at existing polystyrene continuous processes, the vessel capacity and vapor pressure specifications pertain to all chemicals used in those processes. In addition, the EPA is proposing to correct the specification for vessel capacity for these same storage vessels, so that the requirement reads ''<75.7'' cubic meters instead of also listing a lower limit of ''≥38'' cubic meters. The EPA believes that, since the definition of ''storage vessel'' contained in § 63.1312 excludes vessels with capacities smaller than 38 cubic meters, it is unnecessary to note that lower cutoff in this table for storage vessels assigned to existing polystyrene continuous processes.

Table 5 of subpart JJJ. Several technical corrections to Table 5 in subpart JJJ are being proposed. Table 5 describes specifications for Group 1 storage vessels at new affected sources producing particular thermoplastics (e.g., styrene acrylonitrile resin (SAN)). At promulgation, there was a typographical error in the second set of applicability criteria, which applied to SAN Group 1 storage vessels. This set of applicability criteria incorrectly described a storage vessel as having vapor pressure greater than or equal to 0.7 kilopascals and greater than or equal to 10 kilopascals; this should have read ''vapor pressure greater than or equal to 0.7 kilopascals and less than 10 kilopascals.'' However, other technical corrections have removed this set of

applicability criteria from Table 5. Table 5 now indicates three sets of applicability criteria and includes a footnote designating the control level for each set of applicability criteria. At promulgation, two of the sets of criteria for Group 1 storage vessels at SAN new affected sources (i.e., the second and fourth sets) overlapped. As shown below, they covered the same capacity range, and the vapor pressure ranges overlapped:

Capacity ≥ 151 and 0.7 ≤ vapor pressure < 10

Capacity ≥ 151 and vapor pressure ≥ 10

These two sets of applicability criteria have been simplified to the one set of applicability criteria shown below:

Capacity ≥ 151 and vapor pressure ≥ 0.7

The EPA is also proposing to remove the notation ''vp'' from the column including vapor pressure specifications, because that notation was used inconsistently in that column, and because it was unnecessary.

Table 6 of subpart JJJ. At promulgation, two capital letter ''A'''s were inadvertently printed in front of each of the acronyms, where they were defined at the bottom of table 6. The EPA proposes to correct this error in these amendments.

III. 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 proposed 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, with the exception of interagency review materials, will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Act.)

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must submit to the Office of Management and Budget (OMB) for review significant regulatory actions. The Executive Order defines ''significant regulatory action'' as one that OMB determines is likely to result in a rule that may:

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

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

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

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

It has been determined that neither the proposed amendments to the Polymers and Resins I rule, nor the proposed amendments to the Polymers and Resins IV rule qualify as a ''significant regulatory action'' under the terms of Executive Order 12866 and, therefore, are not subject to review by the Office of Management and Budget.

C. 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 the EPA consults with those governments. If the EPA complies by consulting those governments, the Executive Order requires the 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 proposed amendments to subpart U do not create a mandate on State, local, or tribal governments, nor do the proposed amendments to subpart JJJ. These proposed amendments do not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to the proposed amendments to either of these rules.

D. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, the 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 the EPA consults with those governments. If the EPA complies by consulting with those governments, the Executive Order requires the 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 the 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.''

Neither today's proposed amendments to subpart U nor those to subpart JJJ impose any duties or compliance costs on Indian tribal governments. Further, the proposed amendments provided herein do not significantly alter the control standards imposed by subpart U or subpart JJJ for any source, including any that may affect communities of the Indian tribal governments. Hence, today's proposed amendments do 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 these proposed amendments.

E. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small

governments that may be significantly or uniquely affected by the rule.

The EPA has determined that neither the proposed amendments to subpart U nor the proposed amendments to subpart JJJ include a Federal mandate that may result in estimated costs of, in the aggregate, $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector, and that these proposed amendments do not significantly or uniquely impact small governments, because they contain no requirements that apply to such governments or impose obligations upon them. The EPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. In addition, because small governments will not be significantly or uniquely affected by these rules, the Agency is not required to develop a plan with regard to small governments. Therefore, the requirements of the Unfunded Mandates Act do not apply to these proposed amendments.

F. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small business, small not-for-profit enterprises, and small governmental jurisdictions. These proposed amendments would not have a significant impact on a substantial number of small entities, because they impose no additional regulatory requirements on owners or operators of affected sources. Therefore, the EPA certifies that these actions will not have a significant economic impact on a substantial number of small entities.

G. Paperwork Reduction Act

For both the Group I and Group IV Polymers and Resins NESHAP, the information collection requirements (ICR) were submitted to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act.* At promulgation, OMB had already approved the information collection requirements for the Group IV Polymers and Resins NESHAP and assigned those standards the OMB control number 2060–0351. Subsequently, the OMB approved the information collection requirements for the Group I Polymers and Resins NESHAP, and on July 15, 1997 (62 FR 37720) the OMB control number 2060–0356 was assigned to the Group I Polymers and Resins NESHAP. 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 EPA has amended 40 CFR Part 9, Section 9.1, to indicate the ICRs contained in the Group I and IV Polymers and Resins NESHAP. The amendments to the NESHAP contained in this proposal should have no impact on the information collection burden estimates made previously. Therefore, the ICRs have not been revised.

H. Applicability of Executive Order 13045

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 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.

The EPA interprets Executive Order 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. These proposed amendments are not subject to Executive Order 13045 because they do not establish an environmental standard intended to mitigate health or safety risks.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) directs all Federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling and analytical procedures, business practices, etc.) that are developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA requires Federal agencies like EPA to provide Congress, through OMB, with explanations when an agency decides not to use available and applicable voluntary consensus standards.

The proposed amendments to subpart U and subpart JJJ do not involve the proposal of any new technical standards. The EPA welcomes comments on this aspect of these proposed amendments and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

As part of a larger effort, the EPA is undertaking a project to cross-reference existing voluntary consensus standards on testing, sampling, and analysis, with current and future EPA test methods. When completed, this project will assist the EPA in identifying potentially-applicable voluntary consensus standards which can then be evaluated for equivalency and applicability in determining compliance with future regulations.

List of Subjects in 40 CFR Part 63

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

Dated: February 10, 1999.

Carol M. Browner,

Administrator.

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

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

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

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

Subpart U—National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins

2. Section 63.480 is amended:

a. By revising paragraphs (a), (b), (c), (d), (e), (f), (g) introductory text, (g)(1) through (g)(4), (g)(6), (g)(7), (g)(8), (h) introductory text, (h)(1) through (h)(4), (h)(6), (h)(7), (i)(1), (i)(2)(i) introductory

text, (i)(2)(i)(A), and (i)(2)(ii), (i)(3), (i)(4), (i)(5), and (j);

b. Removing paragraph (i)(2)(iii); and

c. Adding paragraph (i)(6), to read as follows:

§ 63.480 Applicability and designation of affected sources.

(a) *Definition of affected source.* The provisions of this subpart apply to each affected source. Affected sources are described in paragraphs (a)(1) through (a)(4) of this section.

(1) An affected source is either an existing affected source or a new affected source. Existing affected source is defined in paragraph (a)(2) of this section, and new affected source is defined in paragraph (a)(3) of this section.

(2) An existing affected source is defined as each group of one or more elastomer product process units (EPPU) and associated equipment, as listed in paragraph (a)(4) of this section, that is not part of a new affected source, as defined in paragraph (a)(3) of this section, that is manufacturing the same primary product and that is located at a plant site that is a major source.

(3) A new affected source is defined as something that meets the criteria of paragraph (a)(3)(i), (a)(3)(ii), or (a)(3)(iii) of this section. The situation described in paragraph (a)(3)(i) of this section is distinct from those situations described in paragraphs (a)(3)(ii) and (a)(3)(iii) of this section and from any situation described in paragraph (i) of this section.

(i) At a site without HAP emission points before June 12, 1995 (i.e., a ''greenfield'' site), each group of one or more EPPU and associated equipment, as listed in paragraph (a)(4) of this section, that is manufacturing the same primary product and that is part of a major source on which construction commenced after June 12, 1995;

(ii) A group of one or more EPPU meeting the criteria in paragraph (i)(1)(i) of this section; or

(iii) A reconstructed affected source meeting the criteria in paragraph (i)(2)(i) of this section.

(4) *Emission points and equipment.* The affected source also includes the emission points and equipment specified in paragraphs (a)(4)(i) through (a)(4)(iv) of this section that are associated with each applicable group of one or more EPPU constituting an affected source.

(i) Each waste management unit.

(ii) Maintenance wastewater.

(iii) Each heat exchange system.

(iv) Equipment required by, or utilized as a method of compliance with, this subpart which may include control devices and recovery devices.

(5) EPPUs and associated equipment, as listed in paragraph (a)(4) of this section, that are located at plant sites that are not major sources are neither affected sources nor part of an affected source.

(b) *EPPUs without organic HAP.* The owner or operator of an EPPU that is part of an affected source, as defined in paragraph (a) of this section, but that does not use or manufacture any organic HAP shall comply with the requirements of either paragraph (b)(1) or (b)(2) of this section. Such an EPPU is not subject to any other provision of this subpart and is not required to comply with the provisions of subpart A of this part.

(1) Retain information, data, and analyses used to document the basis for the determination that the EPPU does not use or manufacture any organic HAP. Types of information that could document this determination include, but are not limited to, records of chemicals purchased for the process, analyses of process stream composition, engineering calculations, or process knowledge.

(2) When requested by the Administrator, demonstrate that the EPPU does not use or manufacture any organic HAP.

(c) *Emission points not subject to the provisions of this subpart.* The affected source includes the emission points listed in paragraphs (c)(1) through (c)(9) of this section, but these emission points are not subject to the requirements of this subpart or to the provisions of subpart A of this part.

(1) Equipment that does not contain organic HAP and is located at an EPPU that is part of an affected source;

(2) Stormwater from segregated sewers;

(3) Water from fire-fighting and deluge systems in segregated sewers;

(4) Spills;

(5) Water from safety showers;

(6) Water from testing of deluge systems;

(7) Water from testing of firefighting systems;

(8) Vessels and equipment storing and/or handling material that contains no organic HAP or organic HAP as impurities only; and

(9) Equipment that is intended to operate in organic HAP service for less than 300 hours during the calendar year.

(d) *Processes exempted from the affected source.* Research and development facilities are exempted from the affected source.

(e) *Applicability determination of elastomer equipment included in a process unit producing a non-elastomer product.* If an elastomer product that is subject to this subpart is produced within a process unit that is subject to subpart JJJ of this part, and at least 50 percent of the elastomer is used in the production of the product manufactured by the subpart JJJ process unit, the unit operations involved in the production of the elastomer are considered part of the process unit that is subject to subpart JJJ, and not this subpart.

(f) *Primary product determination and applicability.* An owner or operator of a process unit that produces or plans to produce an elastomer product shall determine if the process unit is subject to this subpart in accordance with this paragraph. The owner or operator shall initially determine whether a process unit is designated as an EPPU and subject to the provisions of this subpart in accordance with either paragraph (f)(1) or (f)(2) of this section. The owner or operator of a flexible operation unit that was not initially designated as an EPPU, but in which an elastomer product is produced, shall conduct an annual re-determination of the applicability of this subpart in accordance with paragraph (f)(3) of this section. Owners or operators that anticipate the production of an elastomer product in a process unit that was not initially designated as an EPPU, and in which no elastomer products are currently produced, shall determine if the process unit is subject to this subpart in accordance with paragraph (f)(4) of this section. Paragraphs (f)(3) and (f)(5) through (f)(7) of this section discuss compliance only for flexible operation units. Other paragraphs apply to all process units, including flexible operation units, unless otherwise noted. Paragraph (f)(8) of this section contains reporting requirements associated with the applicability determinations. Paragraphs (f)(9) and (f)(10) describe criteria for removing the EPPU designation from a process unit.

(1) *Initial Determination.* The owner or operator shall initially determine if a process unit is subject to the provisions of this subpart based on the primary product of the process unit in accordance with paragraphs (f)(1)(i) through (iii) of this section. If the process unit never uses or manufactures any organic HAP, regardless of the outcome of the primary product determination, the only requirements of this subpart that might apply to the process unit are contained in paragraph (b) of this section. If a flexible operation unit does not use or manufacture any organic HAP during the manufacture of one or more products, paragraph (f)(5)(i) of this section applies to that flexible operation unit.

(i) If a process unit only manufactures one product, then that product shall represent the primary product of the process unit.

(ii) If a process unit produces more than one intended product at the same time, the primary product shall be determined in accordance with paragraph (f)(1)(ii)(A) or (B) of this section.

(A) The product for which the process unit has the greatest annual design capacity on a mass basis shall represent the primary product of the process unit, or

(B) If a process unit has the same maximum annual design capacity on a mass basis for two or more products, and if one of those products is an elastomer product, then the elastomer product shall represent the primary product of the process unit.

(iii) If a process unit is designed and operated as a flexible operation unit, the primary product shall be determined as specified in paragraphs (f)(1)(iii)(A) or (B) of this section based on the anticipated operations for the 5 years following September 5, 1996 at existing process units, or for the first year after the process unit begins production of any product for new process units. If operations cannot be anticipated sufficiently to allow the determination of the primary product for the specified period, applicability shall be determined in accordance with paragraph (f)(2) of this section.

(A) If the flexible operation unit will manufacture one product for the greatest operating time over the specified five year period for existing process units, or the specified one year period for new process units, then that product shall represent the primary product of the flexible operation unit.

(B) If the flexible operation unit will manufacture multiple products equally based on operating time, then the product with the greatest expected production on a mass basis over the specified five year period for existing process units, or the specified one year period for new process units shall represent the primary product of the flexible operation unit.

(iv) If, according to paragraph (f)(1)(i), (ii), or (iii) of this section, the primary product of a process unit is an elastomer product, then that process unit shall be designated as an EPPU. That EPPU and associated equipment, as listed in paragraph (a)(4) of this section, is either an affected source, or part of an affected source comprised of other EPPU and associated equipment, as listed in paragraph (a)(4) of this section, subject to this subpart with the same primary product at the same plant site that is a major source. If the primary product of a process unit is determined to be a product that is not an elastomer product, then that process unit is not an EPPU.

(2) If the primary product cannot be determined for a flexible operation unit in accordance with paragraph (f)(1)(iii) of this section, applicability shall be determined in accordance with this paragraph.

(i) If the owner or operator cannot determine the primary product in accordance with paragraph (f)(1)(iii) of this section, but can determine that an elastomer product is not the primary product, then that flexible operation unit is not an EPPU.

(ii) If the owner or operator cannot determine the primary product in accordance with paragraph (f)(1)(iii) of this section, and cannot determine that an elastomer product is not the primary product as specified in paragraph (f)(2)(i) of this section, applicability shall be determined in accordance with paragraph (f)(2)(ii)(A) or (f)(2)(ii)(B) of this section.

(A) If the flexible operation unit is an existing process unit, the flexible operation unit shall be designated as an EPPU if an elastomer product was produced for 5 percent or greater of the total operating time of the flexible operation unit since March 9, 1999. That EPPU and associated equipment, as listed in paragraph (a)(4) of this section, is either an affected source, or part of an affected source comprised of other EPPU and associated equipment, as listed in paragraph (a)(4) of this section, subject to this subpart with the same primary product at the same plant site that is a major source. For a flexible operation unit that is designated as an EPPU in accordance with this paragraph, the elastomer product produced for the greatest amount of time since March 9, 1999 shall be designated as the primary product of the EPPU.

(B) If the flexible operation unit is a new process unit, the flexible operation unit shall be designated as an EPPU if the owner or operator anticipates that an elastomer product will be manufactured in the flexible operation unit at any time in the first year after the date the unit begins production of any product. That EPPU and associated equipment, as listed in paragraph (a)(4) of this section, is either an affected source, or part of an affected source comprised of other EPPU and associated equipment, as listed in paragraph (a)(4) of this section, subject to this subpart with the same primary product at the same plant site that is a major source. For a process unit that is designated as an EPPU in accordance with this paragraph, the elastomer product that will be produced shall be designated as the primary product of the EPPU. If more than one elastomer product will be produced, the owner or operator may select which elastomer product is designated as the primary product.

(3) *Annual Applicability Determination for non-EPPUs that have produced an elastomer product.* Once per year beginning September 5, 2001, the owner or operator of each flexible operation unit that is not designated as an EPPU, but that has produced an elastomer product at any time in the preceding five-year period or since the date that the unit began production of any product, whichever is shorter, shall perform the evaluation described in paragraphs (f)(3)(i) through (f)(3)(iii) of this section.

(i) For each product produced in the flexible operation unit, the owner or operator shall calculate the percentage of total operating time over which the product was produced during the preceding five-year period.

(ii) The owner or operator shall identify the primary product as the product with the highest percentage of total operating time for the preceding five-year period.

(iii) If the primary product identified in paragraph (f)(3)(ii) is an elastomer product, the flexible operation unit shall be designated as an EPPU. The owner or operator shall notify the Administrator no later than 45 days after determining that the flexible operation unit is an EPPU, and shall comply with the requirements of this subpart in accordance with paragraph (i)(1) of this section for the flexible operation unit.

(4) *Applicability determination for non-EPPUs that have not produced an elastomer product.* The owner or operator that anticipates the production of an elastomer product in a process unit that is not designated as an EPPU, and in which no elastomer products have been produced in the previous 5 year period or since the date that the process unit began production of any product, whichever is shorter, shall determine if the process unit is subject to this subpart in accordance with paragraphs (f)(4)(i) and (ii) of this section. Also, owners or operators who have notified the Administrator that a process unit is not an EPPU in accordance with paragraph (f)(9) of this section, that now anticipate the production of an elastomer product in the process unit, shall determine if the process unit is subject to this subpart in accordance with paragraphs (f)(4)(i) and (ii) of this section.

(i) The owner or operator shall use the procedures in paragraph (f)(1) or (f)(2) of this section to determine if the process unit is designated as an EPPU, with the following exception: for existing process units that are determining the primary product in accordance with paragraph (f)(1)(iii) of this section, or that are determining applicability in accordance with paragraph (f)(2) of this section, production shall be projected for the five years following the date that the owner or operator anticipates initiating the production of an elastomer product, instead of the five years following September 5, 1996.

(ii) If the unit is designated as an EPPU in accordance with paragraph (f)(4)(i) of this section, the owner or operator shall comply in accordance with paragraph (i)(1) of this section.

(5) *Compliance for flexible operation units.* Owners or operators of EPPUs that are flexible operation units shall comply with the standards specified for the primary product, with the exceptions provided in paragraphs (f)(5)(i) and (f)(5)(ii) of this section.

(i) Whenever a flexible operation unit manufactures a product in which no organic HAP is used or manufactured, the owner or operator is only required to comply with either paragraph (b)(1) or (b)(2) of this section to demonstrate compliance for activities associated with the manufacture of that product. This subpart does not require compliance with the provisions of subpart A of this part for activities associated with the manufacture of a product that meets the criteria of paragraph (b) of this section.

(ii) Whenever a flexible operation unit manufactures a product that makes it subject to subpart GGG of this part, the owner or operator is not required to comply with the provisions of this subpart during the production of that product.

(6) Owners or operators of EPPUs that are flexible operation units have the option of determining the group status of each emission point associated with the flexible operation unit, in accordance with either paragraph (f)(6)(i) or (f)(6)(ii) of this section, with the exception of batch front-end process vents. For batch front-end process vents, the owner or operator shall determine the group status in accordance with § 63.488.

(i) The owner or operator may determine the group status of each emission point based on emission point characteristics when the primary product is being manufactured.

(ii) The owner or operator may determine the group status of each emission point separately for each product produced by the flexible operation unit. For each product, the group status shall be determined using the emission point characteristics when that product is being manufactured and using the Group 1 criteria specified for the primary product.

Note: Under this scenario, it is possible that the group status, and therefore the requirement to achieve emission reductions, for an emission point may change depending on the product being manufactured.

(7) Owners or operators determining the group status of emission points in flexible operation units based solely on the primary product in accordance with paragraph (f)(6)(i) of this section shall establish parameter monitoring levels, as required, in accordance with either paragraph (f)(7)(i) or (f)(7)(ii) of this section. Owners or operators determining the group status of emission points in flexible operation units based on each product in accordance with paragraph (f)(6)(ii) of this section shall establish parameter monitoring levels, as required, in accordance with paragraph (f)(7)(i) of this section.

(i) Establish separate parameter monitoring levels in accordance with § 63.505(a) for each individual product.

(ii) Establish a single parameter monitoring level (for each parameter required to be monitored at each device subject to monitoring requirements) in accordance with § 63.505(a) that would apply for all products.

(8) *Reporting requirements.* When it is determined that a process unit is an EPPU and subject to the requirements of this subpart, the Notification of Compliance Status required by § 63.506(e)(5) shall include the information specified in paragraphs (f)(8)(i) and (f)(8)(ii) of this section, as applicable. If it is determined that the process unit is not subject to this subpart, the owner or operator shall either retain all information, data, and analysis used to document the basis for the determination that the primary product is not an elastomer product, or, when requested by the Administrator, demonstrate that the process unit is not subject to this subpart.

(i) If the EPPU manufactures only one elastomer product, identification of that elastomer product.

(ii) If the EPPU is designed and operated as a flexible operation unit, the information specified in paragraphs (f)(8)(ii)(A) through (f)(8)(ii)(D) of this section, as appropriate, shall be submitted.

(A) If a primary product could be determined, identification of the primary product.

(B) Identification of which compliance option, either paragraph (f)(6)(i) or (f)(6)(ii) of this section, has been selected by the owner or operator.

(C) If the option to establish separate parameter monitoring levels for each product in paragraph (f)(7)(i) of this section is selected, the identification of each product and the corresponding parameter monitoring level.

(D) If the option to establish a single parameter monitor level in paragraph (f)(7)(ii) of this section is selected, the parameter monitoring level for each parameter.

(9) *EPPUs terminating production of all elastomer products.* If an EPPU terminates the production of all elastomer products and does not anticipate the production of any elastomer products in the future, the process unit is no longer an EPPU and is not subject to this subpart after notification is made to the Administrator. This notification shall be accompanied by a rationale for why it is anticipated that no elastomer products will be produced in the process unit in the future.

(10) *Redetermination of applicability to EPPUs that are flexible operation units.* Whenever changes in production occur that could reasonably be expected to change the primary product of an EPPU that is operating as a flexible operation unit from an elastomer product to a product that would make the process unit subject to another subpart of this part, the owner or operator shall re-evaluate the status of the process unit as an EPPU in accordance with paragraphs (f)(10)(i) through (iii) of this section.

(i) For each product produced in the flexible operation unit, the owner or operator shall calculate the percentage of total operating time in which the product was produced for the preceding five-year period, or since the date that the process unit began production of any product, whichever is shorter.

(ii) The owner or operator shall identify the primary product as the product with the highest percentage of total operating time for the period.

(iii) If the conditions in (f)(10)(iii)(A) through (C) of this section are met, the flexible operation unit shall no longer be designated as an EPPU after the compliance date of the other subpart and shall no longer be subject to the provisions of this subpart after the date that the process unit is required to be in compliance with the provisions of the other subpart of this part to which it is subject. If the conditions in paragraphs (f)(10)(iii)(A) through (C) of this section are not met, the flexible operation unit shall continue to be considered an EPPU

and subject to the requirements of this subpart.

(A) The product identified in (f)(10)(ii) of this section is not an elastomer product; and

(B) The production of the product identified in (f)(10)(ii) of this section is subject to another subpart of this part; and

(C) The owner or operator submits a notification to the Administrator of the pending change in applicability.

(g) *Storage vessel ownership determination.* The owner or operator shall follow the procedures specified in paragraphs (g)(1) through (g)(7) of this section to determine to which process unit a storage vessel shall be assigned. Paragraph (g)(8) of this section specifies when an owner or operator is required to redetermine to which process unit a storage vessel is assigned.

(1) If a storage vessel is already subject to another subpart of 40 CFR part 63 on September 5, 1996, that storage vessel shall be assigned to the process unit subject to the other subpart.

(2) If a storage vessel is dedicated to a single process unit, the storage vessel shall be assigned to that process unit.

(3) If a storage vessel is shared among process units, then the storage vessel shall be assigned to that process unit located on the same plant site as the storage vessel that has the greatest input into or output from the storage vessel (i.e., the process unit that has the predominant use of the storage vessel.)

(4) If predominant use cannot be determined for a storage vessel that is shared among process units and if only one of those process units is an EPPU subject to this subpart, the storage vessel shall be assigned to that EPPU.

* * * * *

(6) If the predominant use of a storage vessel varies from year to year, then predominant use shall be determined based on the utilization that occurred during the year preceding September 5, 1996 or based on the expected utilization for the 5 years following September 5, 1996, whichever is more representative of the expected operations for that storage vessel for existing affected sources, and based on the expected utilization for the first 5 years after initial start-up for new affected sources. The determination of predominant use shall be reported in the Notification of Compliance Status, as required by § 63.506(e)(5)(vii).

(7) Where a storage vessel is located at a major source that includes one or more process units which place material into, or receive materials from the storage vessel, but the storage vessel is located in a tank farm (including a marine tank farm), the applicability of this subpart shall be determined according to the provisions in paragraphs (g)(7)(i) through (g)(7)(iv) of this section.

(i) The storage vessel may only be assigned to a process unit that utilizes the storage vessel and does not have an intervening storage vessel for that product (or raw material, as appropriate). With respect to any process unit, an intervening storage vessel means a storage vessel connected by hard-piping both to the process unit and to the storage vessel in the tank farm so that product or raw material entering or leaving the process unit flows into (or from) the intervening storage vessel and does not flow directly into (or from) the storage vessel in the tank farm.

(ii) If there is no process unit at the major source that meets the criteria of paragraph (g)(7)(i) of this section with respect to a storage vessel, this subpart does not apply to the storage vessel.

(iii) If there is only one process unit at the major source that meets the criteria of paragraph (g)(7)(i) of this section with respect to a storage vessel, the storage vessel shall be assigned to that process unit. Applicability of this subpart to the storage vessel shall then be determined according to the provisions of paragraph (a) of this section.

(iv) If there are two or more process units at the major source that meet the criteria of paragraph (g)(7)(i) of this section with respect to a storage vessel, the storage vessel shall be assigned to one of those process units according to the provisions of paragraphs (g)(3) through (g)(6) of this section. The predominant use shall be determined among only those process units that meet the criteria of paragraph (g)(7)(i) of this section.

(8) If the storage vessel begins receiving material from (or sending material to) a process unit that was not included in the initial determination, or ceases to receive material from (or send material to) a process unit that was included in the initial determination, the owner or operator shall reevaluate the applicability of this subpart to that storage vessel.

(h) *Recovery operations equipment ownership determination.* The owner or operator shall follow the procedures specified in paragraphs (h)(1) through (h)(6) of this section to determine to which process unit recovery operations equipment shall be assigned. Paragraph (h)(7) of this section specifies when an owner or operator is required to redetermine to which process unit the recovery operations equipment is assigned.

(1) If recovery operations equipment is already subject to another subpart of 40 CFR part 63 on September 5, 1996, that recovery operations equipment shall be assigned to the process unit subject to the other subpart.

(2) If recovery operations equipment is dedicated to a single process unit, the recovery operations equipment shall be assigned to that process unit.

(3) If recovery operations equipment is shared among process units, then the recovery operations equipment shall be assigned to that process unit located on the same plant site as the recovery operations equipment that has the greatest input into or output from the recovery operations equipment (i.e., that process unit has the predominant use of the recovery operations equipment).

(4) If predominant use cannot be determined for recovery operations equipment that is shared among process units and if one of those process units is an EPPU subject to this subpart, the recovery operations equipment shall be assigned to the EPPU subject to this subpart.

* * * * *

(6) If the predominant use of recovery operations equipment varies from year to year, then the predominant use shall be determined based on the utilization that occurred during the year preceding September 5, 1996 for existing affected sources or based on the expected utilization for the 5 years following September 5, 1996 for existing affected sources, whichever is the more representative of the expected operations for the recovery operations equipment, and based on the expected utilization for the first 5 years after initial start-up for new affected sources. The determination of predominant use shall be reported in the Notification of Compliance Status, as required by § 63.506(e)(5)(viii).

(7) If a piece of recovery operations equipment begins receiving material from a process unit that was not included in the initial determination, or ceases to receive material from a process unit that was included in the initial determination, the owner or operator shall reevaluate the applicability of this subpart to that recovery operations equipment.

(i) *Changes or additions to plant sites.* The provisions of paragraphs (i)(1) through (i)(4) of this section apply to owners or operators that change or add to their plant site or affected source. Paragraph (i)(5) provides examples of what are and are not considered process changes for purposes of paragraph (i) of

this section. Paragraph (i)(6) of this section discusses reporting requirements.

(1) *Adding an EPPU to a plant site.* The provisions of paragraphs (i)(1)(i) and (i)(1)(ii) of this section apply to owners or operators that add one or more EPPUs to a plant site.

(i) If a group of one or more EPPUs that produce the same primary product is added to a plant site, the group of one or more EPPUs and associated equipment, as listed in paragraph (a)(4) of this section, shall be a new affected source and shall comply with the requirements for a new affected source in this subpart upon initial start-up or by September 5, 1996, whichever is later, if the criteria specified in either paragraph (i)(1)(i)(A) or (i)(1)(i)(B) are met, and if the criteria in either paragraph (i)(1)(i)(C) or (i)(1)(i)(D) of this section are met.

(A) The construction of the group of one or more EPPUs commenced after June 12, 1995.

(B) The construction or reconstruction, for process units that have become EPPUs, commenced after June 12, 1995.

(C) The group of one or more EPPUs and associated equipment, as listed in paragraph (a)(4) of this section, has the potential to emit 10 tons per year or more of any HAP or 25 tons per year or more of any combination of HAP, and the primary product of the group of one or more EPPUs is currently produced at the plant site as the primary product of an affected source; or

(D) The primary product of the group of one or more EPPUs is not currently produced at the plant site as the primary product of an affected source, and the plant site meets, or after the addition of the group of one or more EPPUs and associated equipment, as listed in paragraph (a)(4) of this section, will meet the definition of a major source.

(ii) If a group of one or more EPPUs that produce the same primary product is added to a plant site, and the group of one or more EPPUs does not meet the criteria specified in paragraph (i)(1)(i) of this section, and the plant site meets, or after the addition will meet, the definition of a major source, the group of one or more EPPUs and associated equipment, as listed in paragraph (a)(4) of this section, shall comply with the requirements for an existing affected source in this subpart upon initial start-up; by September 5, 1999; or by 6 months after notifying the Administrator that a process unit has been designated as an EPPU (in accordance with paragraph (f)(3)(iii) of this section), whichever is later.

(2) * * *

(i) If any process change or addition is made to an existing affected source and that process change or addition meets the criteria specified in paragraphs (i)(2)(i)(A) through (i)(2)(i)(B) of this section, the entire affected source shall be a new affected source and shall comply with the requirements for a new affected source in this subpart upon initial start-up or by September 5, 1996, whichever is later.

(A) It is a process change or addition that meets the definition of reconstruction in § 63.482(b); and

* * * * *

(ii) If any process change is made that results in one or more Group 1 emission points (i.e., either newly created Group 1 emission points or emission points that change group status from Group 2 to Group 1) or if any other emission point is added to an existing affected source (i.e., Group 2 emission point(s) or equipment leaks components subject to § 63.502) and the process change or addition does not meet the criteria specified in paragraphs (i)(2)(i)(A) and (i)(2)(i)(B) of this section, the resulting emission point(s) shall be subject to the requirements for an existing affected source in this subpart. The resulting emission point(s) shall be in compliance upon initial start-up or by the appropriate compliance date specified in § 63.481 (i.e., July 31, 1997 for most equipment leak components subject to § 63.502, and September 5, 1999 for emission points other than equipment leaks), whichever is later.

(3) *Existing affected source requirements for surge control vessels and bottoms receivers that become subject to subpart H requirements.* If a process change or the addition of an emission point causes a surge control vessel or bottoms receiver to become subject to § 63.170 under this paragraph (i), the owner or operator shall be in compliance upon initial start-up or by September 5, 1999, whichever is later.

(4) *Existing affected source requirements for compressors that become subject to subpart H requirements.* If a process change or the addition of an emission point causes a compressor to become subject to § 63.164 under this paragraph (i), the owner or operator shall be in compliance upon initial start-up or by the compliance date for that compressor, as specified in § 63.481(d), whichever is later.

(5) *Determining what are and are not process changes.* For purposes of paragraph (i) of this section, examples of process changes include, but are not limited to, changes in feedstock type or catalyst type, or whenever there is a replacement, removal, or addition of recovery equipment, or changes that increase production capacity. For purposes of paragraph (i) of this section, process changes do not include: Process upsets, unintentional temporary process changes, and changes that are within the equipment configuration and operating conditions documented in the Notification of Compliance Status report required by § 63.506(e)(5).

(6) *Reporting requirements for owners or operators that change or add to their plant site or affected source.* Owners or operators that change or add to their plant site or affected source, as discussed in paragraphs (i)(1) and (i)(2) of this section, shall submit a report as specified in § 63.506(e)(7)(v).

(j) *Applicability of this subpart during periods of start-up, shutdown, malfunction, or non-operation.* Paragraphs (j)(1) through (j)(4) of this section shall be followed during periods of start-up, shutdown, malfunction, or non-operation of the affected source 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 source (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 required by § 63.6(e)(3). However, if a start-up, shutdown, malfunction, or period of non-operation of one portion of an affected source does not affect the ability of a particular emission point to comply with the emission limitations to which it is subject, then that emission point shall still be required to comply with the applicable emission limitations of this subpart during the start-up, shutdown, malfunction, or period of non-operation. For example, if there is an overpressure in the reactor area, a storage vessel that is part of the affected source would still be required to be controlled in accordance with the emission limitations in § 63.484. Similarly, the degassing of a storage vessel would not affect the ability of a batch front-end process vent to meet the emission limitations of §§ 63.486 through 63.492.

(2) The emission limitations set forth in subpart H of this part, as referred to

in § 63.502, shall apply at all times except during periods of non-operation of the affected source (or specific portion thereof) in which the lines are drained and depressurized resulting in cessation of the emissions to which § 63.502 applies, or during periods of start-up, shutdown, malfunction, or process unit shutdown (as defined in § 63.161).

(3) 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 (or, where applicable, 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 does not apply if the item of equipment is malfunctioning. This paragraph 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 source 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 source or portion thereof, the owner or operator shall provide documentation supporting such a claim in the Precompliance Report or in a supplement to the Precompliance Report, as provided for in § 63.506(e)(3). Once approved by the Administrator in accordance with § 63.506(e)(3)(viii), 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 source, as stated in § 63.506(b)(1).

(4) During start-ups, shutdowns, and malfunctions when the emission limitations of this subpart do not apply pursuant to paragraphs (j)(1) through (j)(3) of this section, the owner or operator shall implement, to the extent reasonably available, measures to prevent or minimize excess emissions to the extent practical. For purposes of this paragraph, the term ''excess emissions'' means emissions in excess of those that would have occurred if there were no start-up, shutdown, or malfunction and the owner or operator complied with the relevant provisions of this subpart. The measures to be taken shall be identified in the applicable start-up, shutdown, and malfunction plan, and may include, but are not limited to, air pollution control technologies, recovery technologies, work practices, pollution prevention, monitoring, and/or changes in the manner of operation of the affected source. Back-up control devices are not required, but may be used if available.

3. Section 63.481 is amended by:

a. Revising the section title and paragraphs (a), (b), (c), (d) introductory text, (d)(1) introductory text, (d)(2) introductory text, (d)(2)(i), (d)(2)(ii), (d)(2)(iv), (d)(3), (d)(4) introductory text, (d)(5), (d)(6), (e), (h)(2), (i), and (j); and

b. Adding paragraphs (k), (l), and (m), to read as follows:

§ 63.481 Compliance dates and relationship of this subpart to existing applicable rules.

(a) Affected sources are required to achieve compliance on or before the dates specified in paragraphs (b) through (d) of this section. Paragraph (e) of this section provides information on requesting compliance extensions. Paragraphs (f) through (l) of this section discuss the relationship of this subpart to subpart A and to other applicable rules. Where an override of another authority of the Act is indicated in this subpart, only compliance with the provisions of this subpart is required. Paragraph (m) of this section specifies the meaning of time periods.

(b) New affected sources that commence construction or reconstruction after June 12, 1995 shall be in compliance with this subpart upon initial start-up or September 5, 1996, whichever is later, as provided in § 63.6(b).

(c) Existing affected sources shall be in compliance with this subpart (except for § 63.502 for which compliance is covered by paragraph (d) of this section) no later than September 5, 1999, as provided in § 63.6(c), unless an extension has been granted as specified in paragraph (e) of this section.

(d) Except as provided for in paragraphs (d)(1) through (d)(6) of this section, existing affected sources shall be in compliance with § 63.502 no later than July 31, 1997, unless an extension has been granted pursuant to paragraph (e) of this section.

(1) Compliance with the compressor provisions of § 63.164 shall occur no later than September 5, 1997 for any compressor meeting one or more of the criteria in paragraphs (d)(1)(i) through (d)(1)(iv) of this section, if the work can be accomplished without a process unit shutdown, as defined in § 63.161.

* * * * *

(2) Compliance with the compressor provisions of § 63.164 shall occur no later than March 5, 1998, for any compressor meeting all the criteria in paragraphs (d)(2)(i) through (d)(2)(iv) of this section.

(i) The compressor meets one or more of the criteria specified in paragraphs (d)(1)(i) through (d)(1)(iv) of this section;

(ii) The work can be accomplished without a process unit shutdown as defined in § 63.161;

* * * * *

(iv) The owner or operator submits the request for a compliance extension to the appropriate U.S. Environmental Protection Agency (EPA) Regional Office at the address listed in § 63.13 no later than 45 days before the compliance date. The request for a compliance extension shall contain the information specified in § 63.6(i)(6)(i)(A), (B), and (D). Unless the EPA Regional Office objects to the request for a compliance extension within 30 days after receipt of the request, the request shall be deemed approved.

(3) If compliance with the compressor provisions of § 63.164 cannot reasonably be achieved without a process unit shutdown, the owner or operator shall achieve compliance no later than September 5, 1998. The owner or operator who elects to use this provision shall submit a request for an extension of compliance in accordance with the requirements of paragraph (d)(2)(iv) of this section.

(4) Compliance with the compressor provisions of § 63.164 shall occur no later than September 5, 1999 for any compressor meeting one or more of the criteria in paragraphs (d)(4)(i) through (d)(4)(iii) of this section. The owner or operator who elects to use these provisions shall submit a request for an extension of compliance in accordance with the requirements of paragraph (d)(2)(iv) of this section.

* * * * *

(5) Compliance with the surge control vessel and bottoms receiver provisions of § 63.170 shall occur no later than September 5, 1999.

(6) Compliance with the heat exchange system provisions of § 63.104 shall occur no later than September 5, 1999.

(e) Pursuant to section 112(i)(3)(B) of the Act, an owner or operator may request an extension allowing the existing affected source up to 1 additional year to comply with section 112(d) standards. For purposes of this subpart, a request for an extension shall be submitted to the permitting authority as part of the operating permit application, or to the Administrator as a separate submittal or as part of the Precompliance Report. Requests for

extensions shall be submitted no later than 120 days prior to the compliance dates specified in paragraphs (b) through (d) of this section, except as provided in paragraph (e)(3) of this section. The dates specified in § 63.6(i) for submittal of requests for extensions shall not apply to this subpart.

(1) A request for an extension of compliance shall include the data described in § 63.6(i)(6)(i)(A), (B), and (D).

(2) The requirements in §§ 63.6(i)(8) through 63.6(i)(14) shall govern the review and approval of requests for extensions of compliance with this subpart.

(3) An owner or operator may submit a compliance extension request after the date specified in paragraph (e) of this section, provided that the need for the compliance extension arose after that date, and the need arose due to circumstances beyond reasonable control of the owner or operator. This request shall include, in addition to the information specified in paragraph (e)(1) of this section, a statement of the reasons additional time is needed and the date when the owner or operator first learned of the circumstances necessitating a request for a compliance extension under this paragraph (e)(3).

* * * * *

(h) * * *

(2) Sources subject to 40 CFR part 63, subpart I that have elected to comply through a quality improvement program, as specified in § 63.175 or § 63.176 or both, may elect to continue these programs without interruption as a means of complying with this subpart. In other words, becoming subject to this subpart does not restart or reset the ''compliance clock'' as it relates to reduced burden earned through a quality improvement program.

(i) After the compliance dates specified in this section, a storage vessel that is assigned to an affected source subject to this subpart and that is also subject to the provisions of 40 CFR part 60, subpart Kb is required to comply only with the provisions of this subpart. After the compliance dates specified in this section, that storage vessel shall no longer be subject to 40 CFR part 60, subpart Kb.

(j) After the compliance dates specified in this section, an affected source subject to this subpart that is also subject to the provisions of 40 CFR part 60, subpart VV, is required to comply only with the provisions of this subpart. After the compliance dates specified in this section, the source shall no longer be subject to 40 CFR part 60, subpart VV.

(k) *Applicability of other regulations for monitoring, recordkeeping or reporting with respect to combustion devices, recovery devices, or recapture devices.* After the compliance dates specified in this subpart, if any combustion device, recovery device or recapture device subject to this subpart is also subject to monitoring, recordkeeping, and reporting requirements in 40 CFR part 264 subpart AA or CC, or is subject to monitoring and recordkeeping requirements in 40 CFR part 265 subpart AA or CC and the owner or operator complies with the periodic reporting requirements under 40 CFR part 264 subpart AA or CC that would apply to the device if the facility had final-permitted status, the owner or operator may elect to comply either with the monitoring, recordkeeping and reporting requirements of this subpart, or with the monitoring, recordkeeping and reporting requirements in 40 CFR parts 264 and/or 265, as described in this paragraph, which shall constitute compliance with the monitoring, recordkeeping and reporting requirements of this subpart. The owner or operator shall identify which option has been selected in the Notification of Compliance Status required by § 63.506(e)(5).

(l) *Applicability of other requirements for heat exchange systems or waste management units.* Paragraphs (l)(1) and (l)(2) of this section address instances in which certain requirements from other regulations also apply for the same heat exchange system(s) or waste management unit(s) that are subject to this subpart.

(1) After the applicable compliance date specified in this subpart, if a heat exchange system subject to this subpart is also subject to a standard identified in paragraphs (l)(1)(i) or (ii) of this section, compliance with the applicable provisions of the standard identified in paragraphs (l)(1)(i) or (ii) of this section shall constitute compliance with the applicable provisions of this subpart with respect to that heat exchange system.

(i) Subpart F of this part.

(ii) A subpart of this part which requires compliance with § 63.104 (e.g., subpart JJJ of this part).

(2) After the applicable compliance date specified in this subpart, if any waste management unit subject to this subpart is also subject to a standard identified in paragraph (l)(2)(i) or (ii) of this section, compliance with the applicable provisions of the standard identified in paragraph (l)(2)(i) or (ii) of this section shall constitute compliance with the applicable provisions of this subpart with respect to that waste management unit.

(i) Subpart G of this part.

(ii) A subpart of this part which requires compliance with §§ 63.132 through 63.147 (e.g., subpart JJJ of this part).

(m) All terms in this subpart that define a period of time for completion of required tasks (e.g., monthly, quarterly, annual), unless specified otherwise in the section or paragraph that imposes the requirement, refer to the standard calendar periods.

(1) Notwithstanding time periods specified in this subpart for completion of required tasks, such time periods may be changed by mutual agreement between the owner or operator and the Administrator, as specified in subpart A of this part (e.g., a period could begin on the compliance date or another date, rather than on the first day of the standard calendar period). For each time period that is changed by agreement, the revised period shall remain in effect until it is changed. A new request is not necessary for each recurring period.

(2) Where the period specified for compliance is a standard calendar period, if the initial compliance date occurs after the beginning of the period, compliance shall be required according to the schedule specified in paragraphs (m)(2)(i) or (m)(2)(ii) of this section, as appropriate.

(i) Compliance shall be required before the end of the standard calendar period within which the compliance deadline occurs, if there remain at least 2 weeks for tasks that shall be performed monthly, at least 1 month for tasks that shall be performed each quarter, or at least 3 months for tasks that shall be performed annually; or

(ii) In all other cases, compliance shall be required before the end of the first full standard calendar period after the period within which the initial compliance deadline occurs.

(3) In all instances where a provision of this subpart requires completion of a task during each of multiple successive periods, an owner or operator may perform the required task at any time during the specified period, provided that the task is conducted at a reasonable interval after completion of the task during the previous period.

4. Section 63.482 is amended:

a. By revising paragraph (a) and the definitions for ''Aggregate batch vent stream,'' ''Batch front-end process vent,'' ''Batch process,'' ''Batch unit operation,'' ''Compounding unit,'' ''Continuous front-end process vent,'' ''Continuous process,'' ''Continuous unit operation,'' ''Control device,'' ''Elastomer product,'' ''Elastomer

product process unit (EPPU),'' ''Elastomer type,'' ''Emission point,'' ''Emulsion process,'' ''Epichlorohydrin elastomer,'' ''Ethylene-propylene rubber,'' ''Front-end,'' ''Grade,'' ''Group 1 batch front-end process vent,'' ''Group 1 continuous front-end process vent,'' ''Group 2 continuous front-end process vent,'' ''Group 1 wastewater stream,'' ''Halogenated continuous front-end process vent,'' ''Nitrile butadiene rubber,'' ''Organic hazardous air pollutant(s) (organic HAP),'' ''Process unit,'' ''Process vent,'' ''Product,'' ''Recovery operations equipment,'' ''Resin,'' ''Steady-state conditions,'' ''Storage vessel,'' ''Suspension process,'' and ''Total organic compounds (TOC)'';

b. By removing the definitions of ''Average flow rate,'' ''Batch cycle limitation,'' ''Mass process,'' ''Material recovery section,'' ''Month,'' ''Polybutadiene rubber/styrene butadiene rubber by solution,'' ''Polymerization reaction section,'' ''Raw materials preparation section,'' ''Solid state polymerization unit,'' ''Stripping Technology,'' and ''Year,''; and

c. By adding definitions for the terms ''Annual average batch vent concentration,'' ''Annual average batch vent flow rate,'' ''Annual average concentration,'' ''Annual average flow rate,'' ''Average batch vent concentration,'' ''Average batch vent flow rate'', ''Batch mass input limitation,'' ''Batch mode,'' ''Block polymer,'' ''Combined vent stream,'' ''Construction,'' ''Continuous mode,'' ''Continuous record,'' ''Continuous recorder,'' ''Equipment,'' ''Existing affected source,'' ''Existing process unit,'' ''Flexible operation unit,'' ''Glass transition temperature,'' ''Highest-HAP recipe,'' ''Initial start-up,'' ''Maintenance wastewater,'' ''Maximum true vapor pressure,'' ''Multicomponent system,'' ''Net positive heating value,'' ''New affected source,'' ''New process unit,'' ''On-site or on site,'' ''Operating day,'' ''Polybutadiene rubber by solution,'' ''Recipe,'' ''Reconstruction,'' ''Recovery device,'' ''Residual,'' ''Shutdown,'' ''Start-up,'' ''Stripper,'' ''Stripping,'' ''Styrene butadiene rubber by solution,'' ''Total resource effectiveness index value or TRE index value,'' ''Vent stream,'' ''Waste management unit,'' ''Wastewater,'' and ''Wastewater stream,'' to read as follows:

§ 63.482 Definitions.

(a) The following terms used in this subpart shall have the meaning given them in § 63.2, § 63.101, § 63.111, § 63.161, or the Act, as specified after each term:

Act (§ 63.2)
Administrator (§ 63.2)
Automated monitoring and recording system (§ 63.111)
Boiler (§ 63.111)
Bottoms receiver (§ 63.161)
By compound (§ 63.111)
By-product (§ 63.101)
Car-seal (§ 63.111)
Closed-vent system (§ 63.111)
Combustion device (§ 63.111)
Commenced (§ 63.2)
Compliance date (§ 63.2)
Connector (§ 63.161)
Continuous monitoring system (§ 63.2)
Distillation unit (§ 63.111)
Duct work (§ 63.161)
Emission limitation (Section 302(k) of the Act)
Emission standard (§ 63.2)
Emissions averaging(§ 63.2)
EPA (§ 63.2)
Equipment leak (§ 63.101)
External floating roof (§ 63.111)
Fill or filling (§ 63.111)
Fixed capital cost (§ 63.2)
Flame zone (§ 63.111)
Floating roof (§ 63.111)
Flow indicator (§ 63.111)
Fuel gas system (§ 63.101)
Halogens and hydrogen halides (§ 63.111)
Hard-piping (§ 63.111)
Hazardous air pollutant (§ 63.2)
Heat exchange system (§ 63.101)
Impurity (§ 63.101)
Incinerator (§ 63.111)
In organic hazardous air pollutant service or in organic HAP service (§ 63.161)
Instrumentation system (§ 63.161)
Internal floating roof (§ 63.111)
Lesser quantity (§ 63.2)
Major source (§ 63.2)
Malfunction (§ 63.2)
Open-ended valve or line (§ 63.161)
Operating permit (§ 63.101)
Organic monitoring device (§ 63.111)
Owner or operator (§ 63.2)
Performance evaluation (§ 63.2)
Performance test (§ 63.2)
Permitting authority (§ 63.2)
Plant site (§ 63.101)
Potential to emit (§ 63.2)
Pressure release (§ 63.161)
Primary fuel (§ 63.111)
Process heater (§ 63.111)
Process unit shutdown (§ 63.161)
Process wastewater (§ 63.101)
Process wastewater stream (§ 63.111)
Reactor (§ 63.111)
Recapture device (§ 63.101)
Research and development facility (§ 63.101)
Routed to a process or route to a process (§ 63.161)
Run (§ 63.2)
Secondary fuel (§ 63.111)
Sensor (§ 63.161)
Specific gravity monitoring device (§ 63.111)
Start-up, shutdown, and malfunction plan (§ 63.101)
State (§ 63.2)
Stationary Source (§ 63.2)
Surge control vessel (§ 63.161)
Temperature monitoring device (§ 63.111)
Test method (§ 63.2)
Treatment process (§ 63.111)
Unit operation (§ 63.101)
Visible emission (§ 63.2)

(b) * * *

Aggregate batch vent stream means a gaseous emission stream containing only the exhausts from two or more batch front-end process vents that are ducted, hard-piped, or otherwise connected together for a continuous flow.

Annual average batch vent concentration is determined using Equation 17, as described in § 63.488(h)(2) for halogenated compounds.

Annual average batch vent flow rate is determined by the procedures in § 63.488(e)(3).

Annual average concentration, as used in the wastewater provisions, means the flow-weighted annual average concentration, as determined according to the procedures specified in § 63.144(b), with the exceptions noted in § 63.501, for the purposes of this subpart.

Annual average flow rate, as used in the wastewater provisions, means the annual average flow rate, as determined according to the procedures specified in § 63.144(c), with the exceptions noted in § 63.501, for the purposes of this subpart.

Average batch vent concentration is determined by the procedures in § 63.488(b)(5)(iii) for HAP concentrations and is determined by the procedures in § 63.488(h)(1)(iii) for organic compounds containing halogens and hydrogen halides.

Average batch vent flow rate is determined by the procedures in § 63.488(e)(1) and (e)(2).

* * * * *

Batch front-end process vent means a process vent with annual organic HAP emissions greater than 225 kilograms per year from a batch unit operation within an affected source and located in the front-end of a process unit. Annual organic HAP emissions are determined as specified in § 63.488(b) at the location specified in § 63.488(a)(2).

Batch mass input limitation means an enforceable restriction on the total mass of HAP or material that can be input to a batch unit operation in one year.

Batch mode means the discontinuous bulk movement of material through a

unit operation. Mass, temperature, concentration, and other properties may vary with time. For a unit operation operated in a batch mode (i.e., batch unit operation), the addition of material and withdrawal of material do not typically occur simultaneously.

Batch process means, for the purposes of this subpart, a process where the reactor(s) is operated in a batch mode.

Batch unit operation means a unit operation operated in a batch mode.

Block polymer means a polymer where the polymerization is controlled, usually by performing discrete polymerization steps, such that the final polymer is arranged in a distinct pattern of repeating units of the same monomer.

* * * * *

Combined vent stream, as used in reference to batch front-end process vents, continuous front-end process vents, and aggregate batch vent streams, means the emissions from a combination of two or more of the aforementioned types of process vents. The primary occurrence of a combined vent stream is as combined emissions from a continuous front-end process vent and a batch front-end process vent.

Compounding unit means a unit operation which blends, melts, and resolidifies solid polymers for the purpose of incorporating additives, colorants, or stabilizers into the final elastomer product. A unit operation whose primary purpose is to remove residual monomers from polymers is not a compounding unit.

Construction means the on-site fabrication, erection, or installation of an affected source. Construction also means the on-site fabrication, erection, or installation of a process unit or combination of process units which subsequently becomes an affected source or part of an affected source, due to a change in primary product.

Continuous front-end process vent means a process vent located in the front-end of a process unit and containing greater than 0.005 weight percent total organic HAP from a continuous unit operation within an affected source. The total organic HAP weight percent is determined after the last recovery device, as described in § 63.115(a), and is determined as specified in § 63.115(c).

Continuous mode means the continuous movement of material through a unit operation. Mass, temperature, concentration, and other properties typically approach steady-state conditions. For a unit operation operated in a continuous mode (i.e., continuous unit operation), the simultaneous addition of raw material and withdrawal of product is typical.

Continuous process means, for the purposes of this subpart, a process where the reactor(s) is operated in a continuous mode.

Continuous record means documentation, either in hard copy or computer readable form, of data values measured at least once every 15 minutes and recorded at the frequency specified in § 63.506(d) or (h).

Continuous recorder means a data recording device that either records an instantaneous data value at least once every 15 minutes or records 1-hour or more frequent block average values.

Continuous unit operation means a unit operation operated in a continuous mode.

Control device is defined in § 63.111, except that the term ''continuous front-end process vent'' shall apply instead of the term ''process vent,'' for the purpose of this subpart.

* * * * *

Elastomer product means one of the following types of products, as they are defined in this section:

(1) Butyl Rubber;
(2) Halobutyl Rubber;
(3) Epichlorohydrin Elastomer;
(4) Ethylene Propylene Rubber;
(5) Hypalon™;
(6) Neoprene;
(7) Nitrile Butadiene Rubber;
(8) Nitrile Butadiene Latex;
(9) Polybutadiene Rubber by solution
(10) Styrene Butadiene Rubber by Solution;
(11) Polysulfide Rubber;
(12) Styrene Butadiene Rubber by Emulsion; and
(13) Styrene Butadiene Latex.

Elastomer product process unit (EPPU) means a collection of equipment assembled and connected by hard-piping or duct work, used to process raw materials and to manufacture an elastomer product as its primary product. This collection of equipment includes unit operations; recovery operations equipment; process vents; storage vessels, as determined in § 63.480(g); equipment that is identified in § 63.149; and the equipment that is subject to the equipment leak provisions as specified in § 63.502. Utilities, lines and equipment not containing process fluids, and other non-process lines, such as heating and cooling systems which do not combine their materials with those in the processes they serve, are not part of an elastomer product process unit. An elastomer product process unit consists of more than one unit operation.

Elastomer type means one of the elastomers listed under ''elastomer product'' in this section. Each elastomer identified in that definition represents a different elastomer type.

Emission point means an individual continuous front-end process vent, batch front-end process vent, back-end process vent, storage vessel, waste management unit, heat exchange system, or equipment leak, or equipment subject to § 63.149.

Emulsion process means a process where the monomer(s) is dispersed in droplets throughout a water phase, with the aid of an emulsifying agent such as soap or a synthetic emulsifier. The polymerization occurs either within the emulsion droplet or in the aqueous phase.

Epichlorohydrin elastomer means an elastomer formed from the polymerization or copolymerization of epichlorohydrin (EPI). The main epichlorohydrin elastomers are polyepichlorohydrin, epi-ethylene oxide (EO) copolymer, epi-allyl glycidyl ether (AGE) copolymer, and epi-EO–AGE terpolymer. Epoxies produced by the copolymerization of EPI and bisphenol A are not epichlorohydrin elastomers.

Equipment means, for the purposes of the provisions in § 63.502(a) through (m) and the requirements in subpart H that are referred to in § 63.502(a) through (m), each pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, surge control vessel, bottoms receiver, and instrumentation system in organic hazardous air pollutant service; and any control devices or systems required by subpart H.

Ethylene-propylene rubber means an ethylene-propylene copolymer or an ethylene-propylene terpolymer. Ethylene-propylene copolymers (EPM) result from the polymerization of ethylene and propylene and contain a saturated chain of the polymethylene type. Ethylene-propylene terpolymers (EPDM) are produced in a similar manner as EPM, except that a third monomer is added to the reaction sequence. Typical third monomers include ethylidene norbornene, 1,4-hexadiene, or dicyclopentadiene. Ethylidene norbornene is the most commonly used. The production process includes, but is not limited to, polymerization, recycle, recovery, and packaging operations. The polymerization reaction may occur in either a solution process or a suspension process.

Existing affected source is defined in § 63.480(a)(3).

Existing process unit means any process unit that is not a new process unit.

* * * * *

Flexible operation unit means a process unit that manufactures different chemical products, polymers, or resins periodically by alternating raw materials or operating conditions. These units are also referred to as campaign plants or blocked operations.

Front-end refers to the unit operations in an EPPU prior to, and including, the stripping operations. For all gas-phased reaction processes, all unit operations are considered to be front-end.

* * * * *

Glass transition temperature means the temperature at which an elastomer polymer becomes rigid and brittle.

Grade means a group of recipes of an elastomer type having similar characteristics such as molecular weight, monomer composition, significant money values, and the presence or absence of extender oil and/or carbon black. More than one recipe may be used to produce the same grade.

Group 1 batch front-end process vent means a batch front-end process vent releasing annual organic HAP emissions greater than or equal to 11,800 kg/yr and with a cutoff flow rate, calculated in accordance with § 63.488(f), greater than or equal to the annual average batch vent flow rate. Annual organic HAP emissions and annual average batch vent flow rate are determined at the exit of the batch unit operation, as described in § 62.488(a)(2). Annual organic HAP emissions are determined as specified in § 63.488(b), and annual average batch vent flow rate is determined as specified in § 63.488(e).

* * * * *

Group 1 continuous front-end process vent means a continuous front-end process vent for which the flow rate is greater than or equal to 0.005 standard cubic meter per minute, the total organic HAP concentration is greater than or equal to 50 parts per million by volume, and the total resource effectiveness index value, calculated according to § 63.115, is less than or equal to 1.0.

Group 2 continuous front-end process vent means a continuous front-end process vent for which the flow rate is less than 0.005 standard cubic meter per minute, the total organic HAP concentration is less than 50 parts per million by volume, or the total resource effectiveness index value, calculated according to § 63.115, is greater than 1.0.

* * * * *

Group 1 wastewater stream means a wastewater stream consisting of process wastewater from an existing or new affected source that meets the criteria for Group 1 status in § 63.132(c), with the exceptions listed in § 63.501(a)(10) for the purposes of this subpart (i.e., for organic HAP listed on Table 5 of this subpart only).

* * * * *

Halogenated continuous front-end process vent means a continuous front-end process vent determined to have a mass emission rate of halogen atoms contained in organic compounds of 0.45 kg/hr or greater determined by the procedures presented in § 63.115(d)(2)(v).

* * * * *

Highest-HAP recipe for a product means the recipe of the product with the highest total mass of HAP charged to the reactor during the production of a single batch of product.

* * * * *

Initial start-up means the first time a new or reconstructed affected source begins production of an elastomer product, or, for equipment added or changed as described in § 63.480(i), the first time the equipment is put into operation to produce an elastomer product. Initial start-up does not include operation solely for testing equipment. Initial start-up does not include subsequent start-ups of an affected source or portion thereof following malfunctions or shutdowns or following changes in product for flexible operation units or following recharging of equipment in batch operation. Further, for purposes of § 63.502, initial start-up does not include subsequent start-ups of affected sources or portions thereof following malfunctions or process unit shutdowns.

* * * * *

Maintenance wastewater is defined in § 63.101, except that the term ''elastomer product process unit'' shall apply whenever the term ''chemical manufacturing process unit'' is used. Further, the generation of wastewater from the routine rinsing or washing of equipment in batch operation between batches is not maintenance wastewater, but is considered to be process wastewater, for the purposes of this subpart.

Maximum true vapor pressure is defined in § 63.111, except that the terms ''transfer'' and ''transferred'' shall not apply for the purposes of this subpart.

Multicomponent system means, as used in conjunction with batch front-end process vents, a stream whose liquid and/or vapor contains more than one compound.

* * * * *

Net positive heating value means the difference between the heat value of the recovered chemical stream and the minimum heat value required to ensure a stable flame in a combustion device, when the heat value of the recovered chemical stream is less than the minimum heat value required to ensure a stable flame. This difference must have a positive value when used in the context of ''recovering chemicals for fuel value'' (e.g., in the definition of ''recovery device'' in this section).

* * * * *

New process unit means a process unit for which the construction or reconstruction commenced after June 12, 1995.

* * * * *

Nitrile butadiene rubber means a polymer consisting primarily of unsaturated nitriles and dienes, usually acrylonitrile and 1,3-butadiene, not including nitrile butadiene latex.

On-site or on site means, with respect to records required to be maintained by this subpart or required by another subpart referenced by this subpart, that records are stored at a location within a major source which encompasses the affected source. On-site includes, but is not limited to, storage at the affected source or EPPU to which the records pertain, or storage in central files elsewhere at the major source.

Operating day means the period defined by the owner or operator in the Notification of Compliance Status required by § 63.506(e)(5). The operating day is the period for which daily average monitoring values and batch cycle daily average monitoring values are determined.

Organic hazardous air pollutant(s) (organic HAP) means one or more of the chemicals listed in Table 5 of this subpart or any other chemical which:

(1) Is knowingly produced or introduced into the manufacturing process other than as an impurity; and

(2) Is listed in Table 2 of subpart F of this part.

Polybutadiene rubber by solution means a polymer of 1,3-butadiene produced using a solution process.

* * * * *

Process unit means a collection of equipment assembled and connected by hard-piping or duct work, used to process raw materials and to manufacture a product.

Process vent means a gaseous emission stream from a unit operation that is discharged to the atmosphere either directly or after passing through one or more control, recovery, or recapture devices. Unit operations that may have process vents are condensers, distillation units, reactors, or other unit operations within the EPPU. Process

vents exclude pressure releases, gaseous streams routed to a fuel gas system(s), and leaks from equipment regulated under § 63.502. A gaseous emission stream is no longer considered to be a process vent after the stream has been controlled and monitored in accordance with the applicable provisions of this subpart.

Product means a polymer produced using the same monomers and varying in additives (e.g., initiators, terminators, etc.); catalysts; or in the relative proportions of monomers, that is manufactured by a process unit. With respect to polymers, more than one recipe may be used to produce the same product, and there can be more than one grade of a product. As an example, styrene butadiene latex and halobutyl rubber each represent a different product. Product also means a chemical that is not a polymer, that is manufactured by a process unit. By-products, isolated intermediates, impurities, wastes, and trace contaminants are not considered products.

Recipe means a specific composition, from among the range of possible compositions that may occur within a product, as defined in this section. A recipe is determined by the proportions of monomers and, if present, other reactants and additives that are used to make the recipe. For example, styrene butadiene latex without additives; styrene butadiene latex with an additive; and styrene butadiene latex with different proportions of styrene to butadiene are all different recipes of the same product, styrene butadiene latex.

Reconstruction means the replacement of components of an affected source or of a previously unaffected stationary source that becomes an affected source as a result of the replacement, to such an extent that:

(1) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable new source; and

(2) It is technologically and economically feasible for the reconstructed source to meet the provisions of this subpart.

Recovery device means:

(1) An individual unit of equipment capable of and normally used for the purpose of recovering chemicals for:

(i) Use;

(ii) Reuse;

(iii) Fuel value (i.e., net heating value); or

(iv) For sale for use, reuse, or fuel value (i.e., net heating value).

(2) 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 the purposes of the monitoring, recordkeeping, or reporting requirements of this subpart, recapture devices are considered recovery devices.

Recovery operations equipment means the equipment used to separate the components of process streams. Recovery operations equipment includes distillation units, condensers, etc. Equipment used for wastewater treatment and recovery or recapture devices used as control devices shall not be considered recovery operations equipment.

Residual is defined in § 63.111, except that when the definition in § 63.111 uses the term ''Table 9 compounds,'' the term ''organic HAP listed in Table 5 of subpart U of this part'' shall apply, for the purposes of this subpart.

Resin, for the purposes of this subpart, means a polymer with the following characteristics:

(1) The polymer is a block polymer;

(2) The manufactured polymer does not require vulcanization to make useful products;

(3) The polymer production process is operated to achieve at least 99 percent monomer conversion; and

(4) The polymer process unit does not recycle unreacted monomer back to the process.

Shutdown means for purposes including, but not limited to, periodic maintenance, replacement of equipment, or repair, the cessation of operation of an affected source, an EPPU within an affected source, a waste management unit or unit operation within an affected source, or equipment required or used to comply with this subpart, or the emptying or degassing of a storage vessel. For purposes of the wastewater provisions of § 63.501, shutdown does not include the routine rinsing or washing of equipment in batch operation between batches. For purposes of the batch front-end process vent provisions in §§ 63.486 through 63.492, the cessation of equipment in batch operation is not a shutdown, unless the equipment undergoes maintenance, is replaced, or is repaired.

* * * * *

Start-up means the setting into operation of an affected source, an EPPU within the affected source, a waste management unit or unit operation within an affected source, or equipment required or used to comply with this subpart, or a storage vessel after emptying and degassing. For both continuous and batch front-end processes, start-up includes initial start-up and operation solely for testing equipment. For both continuous and batch front-end processes, start-up does not include the recharging of equipment in batch operation. For continuous front-end processes, start-up includes transitional conditions due to changes in product for flexible operation units. For batch front-end processes, start-up does not include transitional conditions due to changes in product for flexible operation units.

Steady-state conditions means that all variables (temperatures, pressures, volumes, flow rates, etc.) in a process do not vary significantly with time; minor fluctuations about constant mean values may occur.

Storage vessel means a tank or other vessel that is used to store liquids that contain one or more organic HAP. Storage vessels do not include:

(1) Vessels permanently attached to motor vehicles such as trucks, railcars, barges, or ships;

(2) Pressure vessels designed to operate in excess of 204.9 kilopascals and without emissions to the atmosphere;

(3) Vessels with capacities smaller than 38 cubic meters;

(4) Vessels and equipment storing and/or handling material that contains no organic HAP, or organic HAP as impurities only;

(5) Surge control vessels and bottoms receivers; and

(6) Wastewater storage tanks.

Stripper means a unit operation where stripping occurs.

Stripping means the removal of organic compounds from a raw elastomer product. In the production of an elastomer, stripping is a discrete step that occurs after the reactors and before the dryers and other finishing operations. Examples of types of stripping include steam stripping, direct volatilization, chemical stripping, and other methods of devolatilization. For the purposes of this subpart, devolatilization that occurs in dryers, extruders, and other finishing operations is not stripping.

* * * * *

Styrene butadiene rubber by solution means a polymer that consists primarily of styrene and butadiene monomer units and is produced using a solution process.

Suspension process means a polymerization process where the monomer(s) is in a state of suspension, with the help of suspending agents in a

medium other than water (typically an organic solvent). The resulting polymers are not soluble in the reactor medium.

Total organic compounds (TOC) means those compounds, excluding methane and ethane, measured according to the procedures of Method 18 or Method 25A, 40 CFR part 60, appendix A.

Total resource effectiveness index value or TRE index value means a measure of the supplemental total resource requirement per unit reduction of organic HAP associated with a continuous front-end process vent stream, based on vent stream flow rate, emission rate of organic HAP, net heating value, and corrosion properties (whether or not the continuous front-end process vent stream contains halogenated compounds), as quantified by the equations given under § 63.115, with the exceptions noted in § 63.485.

Vent stream, as used in reference to batch front-end process vents, continuous front-end process vents, and aggregate batch vent streams, means the emissions from one or more process vents.

Waste management unit is defined in § 63.111, except that where the definition in § 63.111 uses the term ''chemical manufacturing process unit,'' the term ''EPPU'' shall apply for the purposes of this subpart.

Wastewater means water that:

(1) Contains either:

(i) An annual average concentration of organic HAP listed in Table 5 of this subpart of at least 5 parts per million by weight and has an annual average flow rate of 0.02 liter per minute or greater; or

(ii) An annual average concentration of organic HAP listed on Table 5 of this subpart of at least 10,000 parts per million by weight at any flow rate; and

(2) Is discarded from an EPPU that is part of an affected source. Wastewater is process wastewater or maintenance wastewater.

Wastewater stream means a stream that contains wastewater as defined in this section.

5. Section 63.483 is amended by revising paragraphs (a) introductory text, (b), and (c); and adding paragraph (d), to read as follows:

§ 63.483 Emission standards.

(a) Except as allowed under paragraphs (b) through (d) of this section, the owner or operator of an existing or new affected source shall comply with the provisions in:

* * * * *

(b) When emissions of different kinds (i.e., emissions from continuous front-end process vents, batch front-end process vents, aggregate batch vent streams, storage vessels, process wastewater, and/or in-process equipment subject to § 63.149) are combined, and at least one of the emission streams would be classified as Group 1 in the absence of combination with other emission streams, the owner or operator of an affected source shall comply with the requirements of either paragraph (b)(1) or (b)(2) of this section, as appropriate. For purposes of this paragraph (b), owners or operators of affected sources with combined emission streams containing one or more batch front-end process vents and containing one or more continuous front-end process vents may comply with either paragraph (b)(1) or (b)(2) of this section, as appropriate. For purposes of this paragraph (b), owners or operators of affected sources with combined emission streams containing one or more batch front-end process vents but not containing one or more continuous process vents shall comply with paragraph (b)(3) of this section.

(1) Comply with the applicable requirements of this subpart for each kind of emission in the stream as specified in paragraphs (a)(1) through (a)(6) of this section.

(2) Comply with the first set of requirements, identified in paragraphs (b)(2)(i) through (b)(2)(v) of this section, which applies to any individual emission stream that is included in the combined stream, where either that emission stream would be classified as Group 1 in the absence of combination with other emission streams, or the owner or operator chooses to consider that emission stream to be Group 1 for purposes of this paragraph. Compliance with the first applicable set of requirements identified in paragraphs (b)(2)(i) through (b)(2)(v) of this section constitutes compliance with all other requirements in paragraphs (b)(2)(i) through (b)(2)(v) of this section applicable to other types of emissions in the combined stream.

(i) The requirements of this subpart for Group 1 continuous front-end process vents, including applicable monitoring, recordkeeping, and reporting;

(ii) The requirements of § 63.119(e), as specified in § 63.484, for control of emissions from Group 1 storage vessels, including applicable monitoring, recordkeeping, and reporting;

(iii) The requirements of § 63.139, as specified in § 63.501, for control devices used to control emissions from waste management units, including applicable monitoring, recordkeeping, and reporting;

(iv) The requirements of § 63.139, as specified in § 63.501, for closed vent systems for control of emissions from in-process equipment subject to § 63.149, as specified in § 63.501, including applicable monitoring, recordkeeping, and reporting; or

(v) The requirements of this subpart for aggregate batch vent streams, including applicable monitoring, recordkeeping, and reporting.

(3) The owner or operator of an affected source with combined emission streams containing one or more batch front-end process vents, but not containing one or more continuous front-end process vents, shall comply with paragraphs (b)(3)(i) and (b)(3)(ii) of this section.

(i) The owner or operator of the affected source shall comply with § 63.486 for the batch front-end process vent stream(s).

(ii) The owner or operator of the affected source shall comply with either paragraph (b)(1) or (b)(2) of this section, as appropriate, for the remaining emission streams.

(c) Instead of complying with §§ 63.484, 63.485, 63.493, and 63.501, the owner or operator of an existing affected source may elect to control any or all of the storage vessels, continuous front-end process vents, batch front-end process vents, aggregate batch vent streams, back-end process emissions, and wastewater streams and associated waste management units within the affected source, to different levels using an emissions averaging compliance approach that uses the procedures specified in § 63.503. The restrictions concerning which emission points may be included in an emissions average, including how many emission points may be included, are specified in § 63.503(a)(1). An owner or operator electing to use emissions averaging shall still comply with the provisions of §§ 63.484, 63.485, 63. 486, 63.493, and 63.501 for affected source emission points not included in the emissions average.

(d) A State may decide not to allow the use of the emissions averaging compliance approach specified in paragraph (c) of this section.

6. Section 63.484 is amended by revising paragraphs (a), (b)(2), (c) through (h), (i) introductory text, (i)(1), and (j) through (q); and adding paragraphs (r) and (s), to read as follows:

§ 63.484 Storage vessel provisions.

(a) This section applies to each storage vessel that is assigned to an affected source, as determined by § 63.480(g). Except for those storage vessels exempted by paragraph (b) of

this section, the owner or operator of affected sources shall comply with the requirements of §§ 63.119 through 63.123 and 63.148, with the differences noted in paragraphs (c) through (s) of this section, for the purposes of this subpart.

(b) * * *

(2) Storage vessels containing latex products other than styrene-butadiene latex, located downstream of the stripping operations;

* * * * *

(c) When the term ''storage vessel'' is used in §§ 63.119 through 63.123, the definition of this term in § 63.482 shall apply for the purposes of this subpart.

(d) When the term ''Group 1 storage vessel'' is used in §§ 63.119 through 63.123, the definition of this term in § 63.482 shall apply for the purposes of this subpart.

(e) When the term ''Group 2 storage vessel'' is used in §§ 63.119 through 63.123, the definition of this term in § 63.482 shall apply for the purposes of this subpart.

(f) When the emissions averaging provisions of § 63.150 are referred to in § 63.119 and § 63.123, the emissions averaging provisions contained in § 63.503 shall apply for the purposes of this subpart.

(g) When December 31, 1992 is referred to in § 63.119, June 12, 1995 shall apply instead, for the purposes of this subpart.

(h) When April 22, 1994 is referred to in § 63.119, September 5, 1996 shall apply instead, for the purposes of this subpart.

(i) The owner or operator of an affected source shall comply with this paragraph instead of § 63.120(d)(1)(ii) for the purposes of this subpart. If the control device used to comply with § 63.119(e) is also used to comply with any of the requirements found in §§ 63.485 through 63.501, the performance test required in or accepted by the applicable requirements in §§ 63.485 through 63.501 is acceptable for demonstrating compliance with § 63.119(e), for the purposes of this subpart. The owner or operator will not be required to prepare a design evaluation for the control device as described in § 63.120(d)(1)(i), if the performance test meets the criteria specified in paragraphs (i)(1) and (i)(2) of this section.

(1) The performance test demonstrates that the control device achieves greater than or equal to the required control efficiency specified in § 63.119(e)(1) or § 63.119(e)(2), as applicable; and

* * * * *

(j) When the term ''operating range'' is used in § 63.120(d)(3)(i), the term ''level,'' shall apply instead, for the purposes of this subpart.

(k) For purposes of this subpart, the monitoring plan required by § 63.120(d)(2) shall specify for which control devices the owner or operator has selected to follow the procedures for continuous monitoring specified in § 63.505. For those control devices for which the owner or operator has selected to not follow the procedures for continuous monitoring specified in § 63.505, the monitoring plan shall include a description of the parameter or parameters to be monitored to ensure that the control device is being properly operated and maintained, an explanation of the criteria used for selection of that parameter (or parameters), and the frequency with which monitoring will be performed (e.g., when the liquid level in the storage vessel is being raised), as specified in § 63.120(d)(2)(i).

(l) For purposes of this subpart, the monitoring plan required by § 63.122(b) shall be included in the Notification of Compliance Status required by § 63.506(e)(5).

(m) When the Notification of Compliance Status requirements contained in § 63.152(b) are referred to in §§ 63.120, 63.122, and 63.123, the Notification of Compliance Status requirements contained in § 63.506(e)(5) shall apply for the purposes of this subpart.

(n) When the Periodic Report requirements contained in § 63.152(c) are referred to in §§ 63.120, 63.122, and 63.123, the Periodic Report requirements contained in § 63.506(e)(6) shall apply for the purposes of this subpart.

(o) When other reports as required in § 63.152(d) are referred to in § 63.122, the reporting requirements contained in § 63.506(e)(7) shall apply for the purposes of this subpart.

(p) When the Initial Notification requirements contained in § 63.151(b) are referred to in §§ 63.119 through 63.123, for the purposes of this subpart the owner or operator of an affected source need not comply.

(q) When the determination of equivalence criteria in § 63.102(b) are referred to in § 63.121(a), the provisions in § 63.6(g) shall apply for the purposes of this subpart.

(r) When § 63.119(a) requires compliance according to the schedule provisions in § 63.100, owners and operators of affected sources shall instead comply with the requirements in §§ 63.119(a)(1) through 63.119(a)(4) by the compliance date for storage vessels, which is specified in § 63.481.

(s) In § 63.120(e)(1), instead of the reference to § 63.11(b), the requirements of § 63.504(c) shall apply.

7. Section 63.485 is revised to read as follows:

§ 63.485 Continuous front-end process vent provisions.

(a) For each continuous front-end process vent located at an affected source, the owner or operator shall comply with the requirements of §§ 63.113 through 63.118, except as provided for in paragraphs (b) through (u) of this section. The owner or operator of continuous front-end process vents that are combined with one or more batch front-end process vents shall comply with paragraph (o) or (p) of this section.

(b) When the term ''process vent'' is used in §§ 63.113 through 63.118, the term ''continuous front-end process vent,'' and the definition of this term in § 63.482 shall apply for the purposes of this subpart.

(c) When the term ''halogenated process vent'' is used in §§ 63.113 through 63.118, the term ''halogenated continuous front-end process vent,'' and the definition of this term in § 63.482 shall apply for the purposes of this subpart.

(d) When the term ''Group 1 process vent'' is used in §§ 63.113 through 63.118, the term ''Group 1 continuous front-end process vent,'' and the definition of this term in § 63.482 shall apply for the purposes of this subpart.

(e) When the term ''Group 2 process vent'' is used in §§ 63.113 through 63.118, the term ''Group 2 continuous front-end process vent,'' and the definition of this term in § 63.482 shall apply for the purposes of this subpart.

(f) When December 31, 1992 (i.e., the proposal date for subpart G of this part) is referred to in § 63.113, June 12, 1995 shall instead apply, for the purposes of this subpart.

(g) When §§ 63.151(f), alternative monitoring parameters, and 63.152(e), submission of an operating permit, are referred to in §§ 63.114(c) and 63.117(e), 63.506(f), alternative monitoring parameters, and § 63.506(e)(8), submission of an operating permit, respectively, shall apply for the purposes of this subpart.

(h) When the Notification of Compliance Status requirements contained in § 63.152(b) are referred to in §§ 63.114, 63.117, and 63.118, the Notification of Compliance Status requirements contained in § 63.506(e)(5) shall apply for the purposes of this subpart.

(i) When the Periodic Report requirements contained in § 63.152(c)

are referred to in §§ 63.117 and 63.118, the Periodic Report requirements contained in § 63.506(e)(6) shall apply for the purposes of this subpart.

(j) When the definition of excursion in § 63.152(c)(2)(ii)(A) is referred to in § 63.118(f)(2), the definition of excursion in § 63.505(g) and (h) shall apply for the purposes of this subpart.

(k) When § 63.114(e) specifies that an owner or operator shall submit the information required in § 63.152(b) in order to establish the parameter monitoring range, the owner or operator of an affected source shall comply with the provisions of § 63.505 for establishing the parameter monitoring level and shall comply with § 63.506(e)(5) for the purposes of reporting information related to the establishment of the parameter monitoring level, for the purposes of this subpart. Further, the term ''level'' shall apply whenever the term ''range'' is used in §§ 63.114, 63.117, and 63.118.

(l) When reports of process changes are required under § 63.118(g), (h), (i), or (j), paragraphs (l)(1) through (l)(4) of this section shall apply for the purposes of this subpart. In addition, for the purposes of this subpart paragraph (l)(5) of this section applies, and § 63.118(k) does not apply to owners or operators of affected sources.

(1) For the purposes of this subpart, whenever a process change, as defined in § 63.115(e), is made that causes a Group 2 continuous front-end process vent to become a Group 1 continuous front-end process vent, the owner or operator shall submit a report within 180 days after the process change is made or with the next Periodic Report, whichever is later. A description of the process change shall be submitted with the report of the process change, and the owner or operator of the affected source shall comply with the Group 1 provisions in §§ 63.113 through 63.118 in accordance with § 63.480(i)(2)(ii).

(2) Whenever a process change, as defined in § 63.115(e), is made that causes a Group 2 continuous front-end process vent with a TRE greater than 4.0 to become a Group 2 continuous front-end process vent with a TRE less than 4.0, the owner or operator shall submit a report within 180 days after the process change is made or with the next Periodic Report, whichever is later. A description of the process change shall be submitted with the report of the process change, and the owner or operator shall comply with the provisions in § 63.113(d) by the dates specified in § 63.481.

(3) Whenever a process change, as defined in § 63.115(e), is made that causes a Group 2 continuous front-end process vent with a flow rate less than 0.005 standard cubic meter per minute (scmm) to become a Group 2 continuous front-end process vent with a flow rate of 0.005 scmm or greater and a TRE index value less than or equal to 4.0, the owner or operator shall submit a report within 180 days after the process change is made or with the next Periodic Report, whichever is later. A description of the process change shall be submitted with the report of the process change, and the owner or operator shall comply with the provisions in § 63.113(d) by the dates specified in § 63.481.

(4) Whenever a process change, as defined in § 63.115(e), is made that causes a Group 2 continuous front-end process vent with an organic HAP concentration less than 50 parts per million by volume (ppmv) to become a Group 2 continuous front-end process vent with an organic HAP concentration of 50 ppmv or greater and a TRE index value less than or equal to 4.0, the owner or operator shall submit a report within 180 days after the process change is made or with the next Periodic Report, whichever is later. A description of the process change shall be submitted with the report of the process change, and the owner or operator shall comply with the provisions in § 63.113(d) by the dates specified in § 63.481.

(5) The owner or operator is not required to submit a report of a process change if one of the conditions listed in paragraphs (l)(5)(i), (l)(5)(ii), (l)(5)(iii), or (l)(5)(iv) of this section is met.

(i) The change does not meet the description of a process change in § 63.115(e);

(ii) The vent stream flow rate is recalculated according to § 63.115(e) and the recalculated value is less than 0.005 standard cubic meter per minute;

(iii) The organic HAP concentration of the vent stream is recalculated according to § 63.115(e) and the recalculated value is less than 50 parts per million by volume; or

(iv) The TRE index value is recalculated according to § 63.115(e) and the recalculated value is greater than 4.0.

(m) When § 63.118 (periodic reporting and recordkeeping requirements) refers to § 63.152(f), the recordkeeping requirements in § 63.506(d) shall apply for the purposes of this subpart.

(n) When §§ 63.115 and 63.116 refer to Table 2 of subpart F of this part, the owner or operator is only required to consider organic HAP listed on Table 5 of this subpart, for the purposes of this subpart.

(o) If a batch front-end process vent or aggregate batch vent stream is combined with a continuous front-end process vent, the owner or operator of the affected source containing the combined vent stream shall comply with paragraph (o)(1); with paragraph (o)(2) and with paragraph (o)(3) or (o)(4); or with paragraph (o)(5) of this section, as appropriate.

(1) If a batch front-end process vent or aggregate batch vent stream is combined with a Group 1 continuous front-end process vent prior to the combined vent stream being routed to a control device, the owner or operator of the affected source containing the combined vent stream shall comply with the requirements in paragraph (o)(1)(i) or (o)(1)(ii) of this section.

(i) All requirements for a Group 1 process vent stream in §§ 63.113 through 63.118, except as otherwise provided in this section. As specified in § 63.504(a)(1), performance tests shall be conducted at maximum representative operating conditions. For the purpose of conducting a performance test on a combined vent stream, maximum representative operating conditions shall be when batch emission episodes are occurring that result in the highest organic HAP emission rate (for the combined vent stream) that is achievable during one of the periods listed in § 63.504(a)(1)(i) or § 63.504(a)(1)(ii), without causing any of the situations described in paragraphs (o)(1)(i)(A) through (o)(1)(i)(C) to occur.

(A) Causing damage to equipment;

(B) Necessitating that the owner or operator make product that does not meet an existing specification for sale to a customer; or

(C) Necessitating that the owner or operator make product in excess of demand.

(ii) Comply with the provisions in § 63.483(b)(1), as allowed under § 63.483(b).

(2) If a batch front-end process vent or aggregate batch vent stream is combined with a continuous front-end process vent prior to the combined vent stream being routed to a recovery device, the TRE index value for the combined vent stream shall be calculated at the exit of the last recovery device. The TRE shall be calculated during periods when one or more batch emission episodes are occurring that result in the highest organic HAP emission rate (in the combined vent stream that is being routed to the recovery device) that is achievable during the 6-month period that begins 3 months before and ends 3 months after the TRE calculation, without causing any of the situations described in paragraphs (o)(2)(i) through (o)(2)(iii) to occur.

(i) Causing damage to equipment;

(ii) Necessitating that the owner or operator make product that does not meet an existing specification for sale to a customer; or

(iii) Necessitating that the owner or operator make product in excess of demand.

(3) If the combined vent stream described in paragraph (o)(2) of this section meets the requirements in paragraphs (o)(3)(i), (o)(3)(ii), and (o)(3)(iii) of this section, the combined vent stream shall be subject to the requirements for Group 1 process vents in §§ 63.113 through 63.118, except as otherwise provided in this section, as applicable. Performance tests for the combined vent stream shall be conducted at maximum representative operating conditions, as described in paragraph (o)(1) of this section.

(i) The TRE index value of the combined stream is less than or equal to 1.0;

(ii) The flow rate of the combined vent stream is greater than or equal to 0.005 standard cubic meter per minute; and

(iii) The total organic HAP concentration is greater than or equal to 50 parts per million by volume for the combined vent stream.

(4) If the combined vent stream described in paragraph (o)(2) of this section meets the requirements in paragraph (o)(4)(i), (ii), or (iii) of this section, the combined vent stream shall be subject to the requirements for Group 2 process vents in §§ 63.113 through 63.118, except as otherwise provided in this section, as applicable.

(i) The TRE index value of the combined vent stream is greater than 1.0;

(ii) The flow rate of the combined vent stream is less than 0.005 standard cubic meter per minute; or

(iii) The total organic HAP concentration is less than 50 parts per million by volume for the combined vent stream.

(5) If a batch front-end process vent or aggregate batch vent stream is combined with a Group 2 continuous front-end process vent, the owner or operator shall comply with the requirements in either paragraph (o)(5)(i) or (o)(5)(ii) of this section.

(i) The owner or operator shall comply with the requirements in §§ 63.113 through 63.118 for Group 1 process vents; or

(ii) The owner or operator shall comply with § 63.487(e)(2) for batch front-end process vents and aggregate batch vent streams.

(p) If any gas stream that originates outside of an affected source that is subject to this subpart is normally conducted through the same final recovery device as any continuous front-end process vent stream subject to this subpart, the combined vent stream shall comply with all requirements in §§ 63.113 through 63.118, except as otherwise provided in this section, as applicable.

(1) Instead of measuring the vent stream flow rate at the sampling site specified in § 63.115(b)(1), the sampling site for vent stream flow rate shall be prior to the final recovery device and prior to the point at which the gas stream that is not controlled under this subpart is introduced into the combined vent stream.

(2) Instead of measuring total organic HAP or TOC concentrations at the sampling site specified in § 63.115(c)(1), the sampling site for total organic HAP or TOC concentration shall be prior to the final recovery device and prior to the point at which the gas stream that is not controlled under this subpart is introduced into the combined vent stream.

(3) The efficiency of the final recovery device (determined according to paragraph (p)(4) of this section) shall be applied to the total organic HAP or TOC concentration measured at the sampling site described in paragraph (p)(2) of this section to determine the exit concentration. This exit concentration of total organic HAP or TOC shall then be used to perform the calculations outlined in § 63.115(d)(2)(iii) and § 63.115(d)(2)(iv), for the combined vent stream exiting the final recovery device.

(4) The efficiency of the final recovery device is determined by measuring the total organic HAP or TOC concentration using Method 18 or 25A, 40 CFR part 60, appendix A, at the inlet to the final recovery device after the introduction of any gas stream that is not controlled under this subpart, and at the outlet of the final recovery device.

(q) Group 1 halogenated continuous front-end process vents described in either paragraph (q)(1) or (q)(2) of this section are exempt from the requirements to control hydrogen halides and halogens from the outlet of combustion devices contained in § 63.113(a)(1)(ii) and § 63.113(c).

(1) Group 1 halogenated continuous front-end process vents at existing affected sources producing butyl rubber, halobutyl rubber, or ethylene propylene rubber using a solution process, if the conditions in (q)(1)(i) and (ii) are met. Group 1 halogenated continuous front-end process vents at new affected sources producing butyl rubber, halobutyl rubber, or ethylene propylene rubber using a solution process are not exempt from § 63.113(a)(1)(ii) and § 63.113(c).

(i) If the halogenated continuous front-end process vent stream was controlled by a combustion device prior to June 12, 1995; and

(ii) If the requirements of § 63.113(a)(2); § 63.113(a)(3); § 63.113(b) and the associated testing requirements in § 63.116; or § 63.11(b) and § 63.504(c) are met.

(2) Group 1 halogenated continuous front-end process vents at new and existing affected sources producing an elastomer using a gas-phased reaction process, provided that the requirements of § 63.113(a)(2); § 63.113(a)(3); § 63.113(b) and the associated testing requirements in § 63.116; or § 63.11(b) and § 63.504(c) are met.

(r) The compliance date for continuous front-end process vents subject to the provisions of this section is specified in § 63.481.

(s) *Internal combustion engines.* In addition to the three options for the control of a Group 1 continuous front-end process vent listed in § 63.113(a)(1) through (3), an owner or operator will be permitted to route emissions of organic HAP to an internal combustion engine, provided the conditions listed in paragraphs (s)(1) through (s)(5) of this section are met.

(1) The vent stream routed to the internal combustion engine shall not be a halogenated continuous front-end process vent stream.

(2) The organic HAP is introduced with the primary fuel.

(3) The internal combustion engine is operating at all times that organic HAP emissions are being routed to it. The owner or operator shall demonstrate that the internal combustion engine is operating by continuously monitoring the on/off status of the internal combustion engine.

(4) The owner or operator shall maintain hourly records verifying that the internal combustion engine was operating at all times that emissions were routed to it.

(5) The owner or operator shall include in the Periodic Report a report of all times that the internal combustion engine was not operating while emissions were being routed to it.

(6) If an internal combustion engine meeting the requirements of paragraphs (s)(1) through (5) of this section is used to comply with the provisions of § 63.113(a), the internal combustion engine is exempt from the source testing requirements of § 63.116.

(t) When the provisions of § 63.116(c)(3) and (c)(4) specify that Method 18, 40 CFR part 60, appendix A shall be used, Method 18 or Method

25A, 40 CFR part 60, appendix A may be used for the purposes of this subpart. The use of Method 25A, 40 CFR part 60, appendix A shall conform with the requirements in paragraphs (t)(1) and (t)(2) of this section.

(1) The organic HAP used as the calibration gas for Method 25A, 40 CFR part 60, appendix A shall be the single organic HAP representing the largest percent by volume of the emissions.

(2) The use of Method 25A, 40 CFR part 60, appendix A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(u) In § 63.116(a), instead of the reference to § 63.11(b), the requirements in § 63.504(c) shall apply.

8. Section 63.486 is revised to read as follows:

§ 63.486 Batch front-end process vent provisions.

(a) *Batch front-end process vents.* Except as specified in paragraph (b) of this section, owners and operators of new and existing affected sources with batch front-end process vents shall comply with the requirements in §§ 63.487 through 63.492. The batch front-end process vent group status shall be determined in accordance with § 63.488. Owners or operators of affected sources with batch front-end process vents classified as Group 1 shall comply with the reference control technology requirements for Group 1 batch front-end process vents in § 63.487, the monitoring requirements in § 63.489, the performance test methods and procedures to determine compliance in § 63.490, the recordkeeping requirements in § 63.491, and the reporting requirements in § 63.492. Owners and operators of all Group 2 batch front-end process vents shall comply with the applicable reference control technology requirements in § 63.487, the applicable recordkeeping requirements in § 63.491, and the applicable reporting requirements in § 63.492.

(b) *Aggregate batch vent streams.* Aggregate batch vent streams, as defined in § 63.482, are subject to the control requirements specified in § 63.487(b), as well as the monitoring, testing, recordkeeping, and reporting requirements specified in §§ 63.489 through 63.492 for aggregate batch vent streams.

9. Section 63.487 is amended by revising paragraphs (a) introductory text, (a)(1)(i), (b) introductory text, (b)(1)(i), (b)(2), (c)(1), (c)(2), (e), (f), and (g); and adding paragraph (h), to read as follows:

§ 63.487 Batch front-end process vents—reference control technology.

(a) *Batch front-end process vents.* The owner or operator of an affected source with a Group 1 batch front-end process vent, as determined using the procedures in § 63.488, shall comply with the requirements of either paragraph (a)(1) or (a)(2) of this section. Compliance may be based on either organic HAP or TOC.

(1) * * *

(i) The owner or operator of the affected source shall comply with the requirements of § 63.504(c) for the flare.

* * * * *

(b) *Aggregate batch vent streams.* The owner or operator of an aggregate batch vent stream that contains one or more Group 1 batch front-end process vents shall comply with the requirements of either paragraph (b)(1) or (b)(2) of this section. Compliance may be based on either organic HAP or TOC.

(1) * * *

(i) The owner or operator of the affected source shall comply with the requirements of § 63.504(c) for the flare.

* * * * *

(2) For each aggregate batch vent stream, reduce organic HAP emissions by 90 weight percent or to a concentration of 20 parts per million by volume, whichever is less stringent, on a continuous basis using a control device. For combustion devices, the emission reduction or concentration shall be calculated on a dry basis, corrected to 3 percent oxygen.

(c) * * *

(1) If a combustion device is used to comply with paragraph (a)(2) or (b)(2) of this section for a halogenated batch front-end process vent or halogenated aggregate batch vent stream, the emissions exiting the combustion device shall be ducted to a halogen reduction device that reduces overall emissions of hydrogen halides and halogens by at least 99 percent before discharge to the atmosphere.

(2) A halogen reduction device may be used to reduce the halogen atom mass emission rate to less than 3,750 kg/yr for batch front-end process vents or aggregate batch vent streams and thus make the batch front-end process vent or aggregate batch vent stream nonhalogenated. The nonhalogenated batch front-end process vent or aggregate batch vent stream shall then comply with the requirements of either paragraph (a) or (b) of this section, as appropriate.

* * * * *

(e) *Combination of batch front-end process vents or aggregate batch vent streams with continuous front-end process vents.* If a batch front-end process vent or aggregate batch vent stream is combined with a continuous front-end process vent, the owner or operator shall determine whether the combined vent stream is subject to the provisions of § 63.486 through 63.492 according to paragraphs (e)(1) and (e)(2) of this section.

(1) A batch front-end process vent or aggregate batch vent stream combined with a continuous front-end process vent stream is not subject to the provisions of § 63.486 through 63.492, if the requirements in paragraph (e)(1)(i) and in either paragraph (e)(1)(ii) or (e)(1)(iii) are met.

(i) The only emissions to the atmosphere from the batch front-end process vent or aggregate batch vent stream prior to being combined with the continuous front-end process vent are from equipment subject to § 63.502.

(ii) The batch front-end vent stream or aggregate batch vent stream is combined with a Group 1 continuous front-end process vent stream prior to the combined vent stream being routed to a control device. In this paragraph (e)(1)(ii), the definition of control device as it relates to continuous front-end process vents shall be used. Furthermore, the combined vent stream discussed in this paragraph (e)(1)(ii) shall be subject to § 63.485(o)(1).

(iii) The batch front-end process vent or aggregate batch vent stream is combined with a continuous front-end process vent stream prior to being routed to a recovery device. In this paragraph (e)(1)(iii), the definition of recovery device as it relates to continuous front-end process vents shall be used. Furthermore, the combined vent stream discussed in this paragraph (e)(1)(iii) shall be subject to § 63.485(o)(2).

(2) If the batch front-end process vent or aggregate batch vent stream is combined with a Group 2 continuous front-end process vent, the group status of the batch front-end process vent shall be determined prior to its combination with the Group 2 continuous front-end process vent, in accordance with § 63.488, and the combined vent stream shall be subject to the requirements for aggregate batch vent streams in § 63.486 through 63.492.

(f) *Group 2 batch front-end process vents with annual emissions greater than or equal to the level specified in § 63.488(d).* The owner or operator of a Group 2 batch front-end process vent with annual emissions greater than or equal to the level specified in

§ 63.488(d) shall comply with the provisions of paragraph (f)(1), (f)(2), or (h) of this section.

(1) The owner or operator shall comply with the requirements in paragraphs (f)(1)(i) through (f)(1)(iv) of this section.

(i) The owner or operator shall establish a batch mass input limitation that ensures that the Group 2 batch front-end process vent does not become a Group 1 batch front-end process vent.

(ii) Over the course of the affected source's ''year,'' as reported in the Notification of Compliance Status in accordance with § 63.506(e)(5)(iv), the owner or operator shall not charge a mass of HAP or material to the batch unit operation that is greater than the level established as the batch mass input limitation.

(iii) The owner or operator of an affected source shall comply with the recordkeeping requirements in § 63.491(d)(2), and the reporting requirements in § 63.492(a)(3), (b) and (c).

(iv) The owner or operator of an affected source shall comply with § 63.488(i) when process changes are made.

(2) Comply with the requirements of this subpart for Group 1 batch front-end process vents.

(g) *Group 2 batch front-end process vents with annual emissions less than the level specified in § 63.488(d).* The owner or operator of a Group 2 batch front-end process vent with annual organic HAP emissions less than the level specified in § 63.488(d), shall comply with paragraph (g)(1), (g)(2), (g)(3), or (g)(4) of this section.

(1) The owner or operator of the affected source shall comply with the requirements in paragraphs (g)(1)(i) through (g)(1)(iv) of this section.

(i) The owner or operator shall establish a batch mass input limitation that ensures emissions do not exceed the appropriate level specified in § 63.488(d).

(ii) Over the course of the affected source's ''year,'' as reported in the Notification of Compliance Status in accordance with § 63.506(e)(5)(iv), the owner or operator shall not charge a mass of HAP or material to the batch unit operation that is greater than the level established as the batch mass input limitation.

(iii) The owner or operator of the affected source shall coply with the recordkeeping requirements in § 63.491(d)(1), and the reporting requirements in § 63.492(a)(2), (b), and (c).

(iv) The owner or operator of the affected source shall comply with § 63.488(i) when process changes are made.

(2) Comply with the requirements of paragraph (f)(1) of this section;

(3) Comply with the requirements of paragraph (f)(2) of this section; or

(4) Comply with the requirements of paragraph (h) of this section.

(h) Owners or operators of Group 2 batch front-end process vents are not required to establish a batch mass input limitation if the batch front-end process vent is Group 2 at the conditions specified in paragraphs (h)(1) and (h)(2) of this section and if the owner or operator complies with the recordkeeping provisions in §§ 63.491(a)(1) through (3), 63.491(a)(9), and 63.491(a)(4) through (6) as applicable, and the reporting requirements in § 63.492(a)(5) and (6) and (b).

(1) Emissions for the single highest-HAP recipe (considering all products that are produced in the batch unit operation) are used in the group determination; and

(2) The group determination assumes that the batch unit operation is operating at the maximum design capacity of the EPPU for 12 months.

10. Section 63.488 is amended by:

a. Revising paragraphs (a)(1), (b) introductory text, (b)(1), (b)(2), (b)(3), (b)(4)(i), (b)(4)(ii)(B)(*1*), (b)(4)(iii), (b)(5) introductory text, (b)(5)(i), through (iv), (b)(5)(v) introductory text, (b)(5)(v)(A), (b)(6), (d), (e) introductory text, (e)(1) introductory text, (e)(1)(i), (e)(1)(iii), (e)(2), (e)(3), (g), (h)(1) introductory text, (h)(1)(iii), (h)(1)(iv), (h)(2) and (i), and

b. Adding paragraph (b)(9), to read as follows:

§ 63.488 Methods and procedures for batch front-end process vent group determination.

(a) * * *

(1) The procedures specified in paragraphs (b) through (g) shall be followed to determine the group status of each batch front-end process vent. This determination shall be made in accordance with either paragraph (a)(1)(i) or (a)(1)(ii) of this section.

(i) An owner or operator may choose to determine the group status of a batch front-end process vent based on the expected mix of products. For each product, emission characteristics of the single highest-HAP recipe, as defined in paragraph (a)(1)(iii) of this section, for that product, shall be used in the procedures in paragraphs (b) through (i) of this section.

(ii) An owner or operator may choose to determine the group status of a batch front-end process vent based on annualized production of the single highest-HAP recipe, as defined in paragraph (a)(1)(iii) of this section, considering all products produced or processed in the batch unit operation. The annualized production of the highest-HAP recipe shall be based exclusively on the production of the single highest-HAP recipe of all products produced or processed in the batch unit operation for a 12 month period. The production level used may be the actual production rate. It is not necessary to assume a maximum production rate (i.e., 8,760 hours per year at maximum design production).

(iii) The single highest-HAP recipe for a product means the recipe of the product with the highest total mass of HAP charged to the reactor during the production of a single batch of product.

* * * * *

(b) *Determination of annual emissions.* The owner or operator shall calculate annual uncontrolled TOC or organic HAP emissions for each batch front-end process vent using the methods described in paragraphs (b)(1) through (b)(8) of this section. To estimate emissions from a batch emissions episode, owners or operators may use either the emissions estimation equations in paragraphs (b)(1) through (b)(4) of this section, or direct measurement as specified in paragraph (b)(5) of this section. Engineering assessment may also be used to estimate emissions from a batch emission episode, but only under the conditions described in paragraph (b)(6) of this section. In using the emissions estimation equations in paragraphs (b)(1) through (b)(4) of this section, individual component vapor pressure and molecular weight may be obtained from standard references. Methods to determine individual HAP partial pressures in multicomponent systems are described in paragraph (b)(9) of this section. Other variables in the emissions estimation equations may be obtained through direct measurement, as defined in paragraph (b)(5) of this section, through engineering assessment, as defined in paragraph (b)(6)(ii) of this section, by process knowledge, or by any other appropriate means. Assumptions used in determining these variables must be documented. Once emissions for the batch emission episode have been determined using either the emissions estimation equations, direct measurement, or engineering assessment, emissions from a batch cycle shall be calculated in accordance with paragraph (b)(7) of this section, and annual emissions from the batch front-end process vent shall be

calculated in accordance with paragraph (b)(8) of this section.

(1) TOC or organic HAP emissions from the purging of an empty vessel shall be calculated using Equation 1. This equation does not take into account evaporation of any residual liquid in the vessel.

(2) TOC or organic HAP emissions from the purging of a filled vessel shall be calculated using Equation 2.

(3) Emissions from vapor displacement due to transfer of material into or out of a vessel shall be calculated using Equation 3.

$$E_{episode} = \frac{(y)(V)(P)(MW_{WAVG})}{RT} \qquad [Eq.\ 3]$$

where:

$E_{episode}$ = Emissions, kg/episode.

y = Saturated mole fraction of all TOC or organic HAP in vapor phase.

V = Volume of gas displaced from the vessel, m^3.

P = Pressure of vessel vapor space, kPa.

MW_{WAVG} = Weighted average molecular weight of TOC or organic HAP in vapor, determined in accordance with paragraph (b)(4)(i)(D) of this section, kg/kmol.

R = Ideal gas constant, 8.314 m^3 •kPa/kmol•°K.

T = Temperature of vessel vapor space, °K.

(4) * * *

(i) If the final temperature to which the vessel contents is heated is lower than 50 K below the boiling point of the HAP in the vessel, then emissions shall be calculated using the equations in paragraphs (b)(4)(i)(A) through (b)(4)(i)(D) of this section.

(A) Emissions caused by heating of a vessel shall be calculated using Equation 4. The assumptions made for this calculation are atmospheric pressure of 760 mm Hg and the displaced gas is always saturated with VOC vapor in equilibrium with the liquid mixture.

$$E_{episode} = \left[\frac{\dfrac{\sum_{i=1}^{n}(P_i)_{T1}}{101.325 - \sum_{i=1}^{n}(P_i)_{T1}} + \dfrac{\sum_{i=1}^{n}(P_i)_{T_2}}{101.325 - \sum_{i=1}^{n}(P_i)_{T2}}}{2} \right] * (\Delta\eta) \left[\frac{(MW_{WAVG,T1}) + (MW_{WAVG,T2})}{2} \right] \qquad [Eq.\ 4]$$

where:

$E_{episode}$ = Emissions, kg/episode.

$(P_i)_T1$, $(P_i)_T2$ = Partial pressure (kPa) TOC or each organic HAP in the vessel headspace at initial (T1) and final (T2) temperature.

n = Number of organic HAP in stream. Note: Summation is not applicable if TOC emissions are being estimated.

Δη = Number of kilogram-moles (kg-moles) of gas displaced, determined in accordance with paragraph (b)(4)(i)(B) of this section.

101.325 = Constant, kPa.

$(MW_{WAVG,}T1)$, $(MW_{WAVG,}T2)$ = Weighted average molecular weight of TOC or total organic HAP in the displaced gas stream, determined in accordance with paragraph (b)(4)(i)(D) of this section.

(B) The moles of gas displaced, Δη, is calculated using equation 5.

$$\Delta\eta = \frac{V_{fs}}{R}\left[\left(\frac{Pa_1}{T_1}\right) - \left(\frac{Pa_2}{T_2}\right)\right] \qquad [Eq.\ 5]$$

where:

Δη = Number of kg-moles of gas displaced.

V_{fs} = Volume of free space in the vessel, m^3.

R = Ideal gas constant, 8.314 m^3•kPa/kmol•K.

Pa_1 = Initial noncondensible gas partial pressure in the vessel, kPa.

Pa_2 = Final noncondensible gas partial pressure, kPa.

T_1 = Initial temperature of vessel, K.

T_2 = Final temperature of vessel, K.

(C) The initial and final pressure of the noncondensible gas in the vessel shall be calculated using equation 6.

$$Pa = 101.325 - \sum_{i=1}^{n}(P_i)_T \qquad [Eq.\ 6]$$

where:

Pa = Initial or final partial pressure of noncondensible gas in the vessel headspace, kPa.

101.325 = Constant, kPa.

$(P_i)_T$ = Partial pressure of TOC or each organic HAP i in the vessel headspace, kPa, at the initial or final temperature (T_1 or T_2).

n = Number of organic HAP in stream. Note: Summation is not applicable if TOC emissions are being estimated.

(D) The weighted average molecular weight of TOC or organic HAP in the displaced gas, MW_{WAVG}' shall be calculated using equation 7:

$$MW_{WAVG} = \frac{\sum_{i=1}^{n}(\text{mass of C})_i\ (\text{molecular weight of C})_i}{\sum_{i=1}^{n}(\text{mass of C})_i} \qquad [Eq.\ 7]$$

where:

c = TOC or organic HAP component

n = Number of TOC or organic HAP components in stream.

(ii) * * *

(B) * * *

(*1*) If the final temperature of the heatup is at or lower than 5 K below the boiling point, the final temperature for the last increment shall be the final temperature for the heatup, even if the last increment is less than 5 K.

* * * * *

(iii) If the vessel is operating with a condenser, and the vessel contents are heated to the boiling point, the primary condenser is considered part of the process, as described in § 63.488(a)(2). Emissions shall be calculated as the sum of Equation 4, which calculates emissions due to heating the vessel contents to the temperature of the gas exiting the condenser, and Equation 3, which calculates emissions due to the displacement of the remaining saturated noncondensible gas in the vessel. The final temperature in Equation 4 shall be set equal to the exit gas temperature of the condenser. Equation 3 shall be used as written below in Equation 3a, using free space volume, and T_2 is set equal to the condenser exit gas temperature.

$$E_{episode} = \frac{(y_i)(V_{fs})(P_T)(MW_{wavg})}{(R)\ (T)} \qquad \text{[Eq. 3a]}$$

where:

$E_{episode}$ = Emissions, kg/episode.

y_i = Saturated mole fraction of all TOC or organic HAP in the vapor phase.

V_{fs} = Volume of the free space in the vessel, m^3.

P_T = Pressure of the vessel vapor space, kPa.

MW_{WAVG} = Weighted average molecular weight of TOC or organic HAP in vapor, determined in accordance with paragraph (b)(4)(i)(D) of this section.

R = Ideal gas constant, 8.314 m^3•kPa/kmol•K.

T = Temperature of condenser exit stream K.

(5) The owner or operator may estimate annual emissions for a batch emission episode by direct measurement. If direct measurement is used, the owner or operator shall either perform a test for the duration of a representative batch emission episode or perform a test during only those periods of the batch emission episode for which the emission rate for the entire episode can be determined or for which the emissions are greater than the average emission rate of the batch emission episode. The owner or operator choosing either of these options shall develop an emission profile for the entire batch emission episode, based on either process knowledge or test data collected, to demonstrate that test periods are representative. Examples of information that could constitute process knowledge include calculations based on material balances and process stoichiometry. Previous test results may be used provided the results are still relevant to the current batch front-end process vent conditions. Performance tests shall follow the procedures specified in paragraphs (b)(5)(i) through (b)(5)(iii) of this section. The procedures in either paragraph (b)(5)(iv) or (b)(5)(v) of this section shall be used to calculate the emissions per batch emission episode.

(i) Method 1 or 1A, 40 CFR part 60, appendix A, as appropriate, shall be used for selection of the sampling sites if the flow measuring device is a pitot tube. No traverse is necessary when Method 2A or 2D, 40 CFR part 60, appendix A is used to determine gas stream volumetric flow rate.

(ii) Annual average batch vent flow rate shall be determined as specified in paragraph (e) of this section.

(iii) Method 18 or Method 25A, of 40 CFR part 60, appendix A, shall be used to determine the concentration of TOC or organic HAP, as appropriate. The use of Method 25A, 40 CFR part 60, appendix A shall conform with the requirements in paragraphs (b)(5)(iii)(A) and (b)(5)(iii)(B) of this section.

(A) The organic HAP used as the calibration gas for Method 25A, 40 CFR part 60, appendix A shall be the single organic HAP representing the largest percent by volume of the emissions.

(B) The use of Method 25A, 40 CFR part 60, appendix A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(iv) If an integrated sample is taken over the entire batch emission episode to determine average batch vent concentration of TOC or total organic HAP, emissions shall be calculated using Equation 8.

$$E_{episode} = K\left[\sum_{j=1}^{n}(C_j)\ (M_j)\right] AFR\ (T_h) \qquad \text{[Eq. 8]}$$

where:

$E_{episode}$ = Emissions, kg/episode

K = Constant, 2.494×10^{-6} $(ppmv)^{-1}$ (gm-mole/scm) (kg/gm) (min/hr), where standard temperature is 20°C.

C_j = Average batch vent concentration of TOC or sample organic HAP component j of the gas stream for the batch emission episode, dry basis, ppmv.

M_j = Molecular weight of TOC or sample organic HAP component j of the gas stream, dry basis, gm/gm-mole.

AFR = Average batch vent flow rate of gas stream, dry basis, scmm.

T_h = Hours/episode

n = Number of organic HAP in stream. Note: Summation not applicable if TOC emissions are being estimated using a TOC concentration measured using Method 25A, 40 CFR part 60, appendix A.

(v) If grab samples are taken to determine the average batch vent concentration of TOC or total organic HAP, emissions shall be calculated according to paragraphs (b)(5)(v)(A) and (b)(5)(v)(B) of this section.

(A) For each measurement point, the emission rate shall be calculated using Equation 9.

$$E_{point} = K\left[\sum_{j=1}^{n} C_j M_j\right] FR \qquad \text{[Eq. 9]}$$

where:

E_{point} = Emission rate for individual measurement point, kg/hr.

K = Constant, 2.494×10^{-6} $(ppmv)^{-1}$ (gm-mole/scm) (kg/gm) (min/hr), where standard temperature is 20°C.

C_j = Concentration of TOC or sample organic HAP component j of the gas stream, dry basis, ppmv.
M_j = Molecular weight of TOC or sample organic HAP component j of the gas stream, gm/gm-mole.
FR = Flow rate of gas stream for the measurement point, dry basis, scmm.
n = Number of organic HAP in stream. Note: Summation not applicable if TOC emissions are being estimated using a TOC concentration measured using Method 25A, 40 CFR part 60, appendix A.

* * * * *

(6) Engineering assessment may be used to estimate emissions from a batch emission episode, if the criteria in paragraph (b)(6)(i) are met. Data or other information used to demonstrate that the criteria in paragraph (b)(6)(i) of this section have been met shall be reported as specified in paragraph (b)(6)(iii) of this section. Paragraph (b)(6)(ii) of this section defines engineering assessment, for the purposes of estimating emissions from a batch emissions episode. All data, assumptions, and procedures used in an engineering assessment shall be documented.

(i) If the criteria specified in paragraph (b)(6)(i)(A), (B), or (C) are met for a specific batch emission episode, the owner or operator may use engineering assessment, as described in paragraph (b)(6)(ii) of this section, to estimate emissions from that batch emission episode, and the owner or operator is not required to use the emissions estimation equations described in paragraphs (b)(1) through (b)(4) of this section to estimate emissions from that batch emission episode.

(A) Previous test data, where the measurement of organic HAP or TOC emissions was an outcome of the test, show a greater than 20 percent discrepancy between the test value and the value estimated using the applicable equations in paragraphs (b)(1) through (b)(4) of this section. Paragraphs (b)(6)(i)(A)(1) and (2) of this section describe test data that will be acceptable under this paragraph (b)(6)(i)(A).

(*1*) Test data for the batch emission episode obtained during production of the product for which the demonstration is being made.

(*2*) Test data obtained for a batch emission episode from another process train, where the test data were obtained during production of the product for which the demonstration is being made. Test data from another process train may be used only if the owner or operator can demonstrate that the data are representative of the batch emission episode for which the demonstration is being made, taking into account the nature, size, operating conditions, production rate, and sequence of process steps (e.g., reaction, distillation, etc.) of the equipment in the other process train.

(B) Previous test data obtained during the production of the product for which the demonstration is being made, for the batch emission episode with the highest organic HAP emissions on a mass basis, show a greater than 20 percent discrepancy between the test value and the value estimated using the applicable equations in paragraphs (b)(1) through (b)(4) of this section. If the criteria in this paragraph (b)(6)(i)(B) are met, then engineering assessment may be used for all batch emission episodes associated with that batch cycle for that batch unit operation.

(C) The owner or operator has requested approval to use engineering assessment to estimate emissions from a batch emissions episode. The request to use engineering assessment to estimate emissions from a batch emissions episode shall contain sufficient information and data to demonstrate to the Administrator that engineering assessment is an accurate means of estimating emissions for that particular batch emissions episode. The request to use engineering assessment to estimate emissions for a batch emissions episode shall be submitted in the Precompliance Report required under § 63.506(e)(3).

(ii) Engineering assessment includes, but is not limited to, the following:

(A) Previous test results, provided the test was representative of current operating practices.

(B) Bench-scale or pilot-scale test data obtained under conditions representative of current process operating conditions.

(C) Flow rate, TOC emission rate, or organic HAP emission rate specified or implied within a permit limit applicable to the batch front-end process vent.

(D) Design analysis based on accepted chemical engineering principles, measurable process parameters, or physical or chemical laws or properties. Examples of analytical methods include, but are not limited to:

(*1*) Use of material balances;

(*2*) Estimation of flow rate based on physical equipment design, such as pump or blower capacities;

(*3*) Estimation of TOC or organic HAP concentrations based on saturation conditions; and

(*4*) Estimation of TOC or organic HAP concentrations based on grab samples of the liquid or vapor.

(iii) Data or other information used to demonstrate that the criteria in paragraph (b)(6)(i) of this section have been met shall be reported as specified in paragraphs (b)(6)(iii)(A) and (b)(6)(iii)(B) of this section.

(A) Data or other information used to demonstrate that the criteria in paragraph (b)(6)(i)(A) or (b)(6)(i)(B) of this section have been met shall be reported in the Notification of Compliance Status, as required in § 63.492(a)(8).

(B) The request for approval to use engineering assessment to estimate emissions from a batch emissions episode as allowed under paragraph (b)(6)(i)(C) of this section, and sufficient data or other information for demonstrating to the Administrator that engineering assessment is an accurate means of estimating emissions for that particular batch emissions episode shall be submitted with the Precompliance Report, as required in § 63.506(e)(3).

* * * * *

(9) Individual HAP partial pressures in multicomponent systems shall be determined using the appropriate method specified in paragraphs (b)(9)(i) through (b)(9)(iii) of this section.

(i) If the components are miscible, use Raoult's law to calculate the partial pressures;

(ii) If the solution is a dilute aqueous mixture, use Henry's law constants to calculate partial pressures;

(iii) If Raoult's law or Henry's law are not appropriate or available, the owner or operator may use any of the options in paragraphs (b)(9)(iii)(A), (B), or (C) of this section.

(A) Experimentally obtained activity coefficients, Henry's law constants, or solubility data;

(B) Models, such as group-contribution models, to predict activity coefficients; or

(C) Assume the components of the system behave independently and use the summation of all vapor pressures from the HAPs as the total HAP partial pressure.

* * * * *

(d) *Minimum emission level exemption.* A batch front-end process vent with annual emissions of TOC or organic HAP less than 11,800 kg/yr is considered a Group 2 batch front-end process vent and the owner or operator of that batch front-end process vent shall comply with the requirements in § 63.487(f) or (g). Annual emissions of TOC or organic HAP are determined at the exit of the batch unit operation, as described in paragraph (a)(2) of this section, and are determined as specified in paragraph (b) of this section. The owner or operator of that batch front-end process vent is not required to comply with the provisions in paragraphs (e) through (g) of this section.

(e) *Determination of average batch vent flow rate and annual average batch vent flow rate.* The owner or operator shall determine the average batch vent flow rate for each batch emission episode in accordance with one of the procedures provided in paragraphs (e)(1) through (e)(2) of this section. The annual average batch vent flow rate for a batch front-end process vent shall be calculated as specified in paragraph (e)(3) of this section.

(1) Determination of the average batch vent flow rate for a batch emission episode by direct measurement shall be made using the procedures specified in paragraphs (e)(1)(i) through (e)(1)(iii) of this section.

(i) The vent stream volumetric flow rate (FR_i) for a batch emission episode, in scmm at 20°C, shall be determined using Method 2, 2A, 2C, or 2D of 40 CFR part 60, appendix A, as appropriate.

* * * * *

(iii) The average batch vent flow rate for a batch emission episode shall be calculated using Equation 13.

$$AFR_{episode} = \frac{\sum_{i=1}^{n} FR_i}{n} \qquad \text{[Eq. 13]}$$

where:

$AFR_{episode}$ = Average batch vent flow rate for the batch emission episode, scmm.

FR_i = Flow rate for individual measurement i, scmm.

n = Number of flow rate measurements taken during the batch emission episode.

(2) The average batch vent flow rate for a batch emission episode may be determined by engineering assessment, as defined in paragraph (b)(6)(i) of this section. All data, assumptions, and procedures used shall be documented.

(3) The annual average batch vent flow rate for a batch front-end process vent shall be calculated using Equation 14.

$$AFR = \frac{\sum_{i=1}^{n} (DUR_i)(AFR_{episode,\,i})}{\sum_{i=1}^{n} (DUR_i)} \qquad \text{[Eq. 14]}$$

where:

AFR = Annual average batch vent flow rate for the batch front-end process vent, scmm.

DUR_i = Duration of type i batch emission episodes annually, hr/yr.

$AFR_{episode}$ = Average batch vent flow rate for type i batch emission episode, scmm.

n = Number of types of batch emission episodes venting from the batch front-end process vent.

* * * * *

(g) *Group 1/Group 2 status determination.* The owner or operator shall compare the cutoff flow rate, calculated in accordance with paragraph (f) of this section, with the annual average batch vent flow rate, determined in accordance with paragraph (e)(3) of this section. The group determination status for each batch front-end process vent shall be made using the criteria specified in paragraphs (g)(1) and (g)(2) of this section.

(1) If the cutoff flow rate is greater than or equal to the annual average batch vent flow rate of the stream, the batch front-end process vent is classified as a Group 1 batch front-end process vent.

(2) If the cutoff flow rate is less than the annual average batch vent flow rate of the stream, the batch front-end process vent is classified as a Group 2 batch front-end process vent.

(h) * * *

(1) The concentration of each organic compound containing halogen atoms (ppmv, by compound) for each batch emission episode shall be determined based on any one of the following procedures:

* * * * *

(iii) Average concentration of organic compounds containing halogens and hydrogen halides as measured by Method 26 or 26A of 40 CFR part 60, appendix A.

(iv) Any other method or data that has been validated according to the applicable procedures in Method 301, 40 CFR part 63, appendix A.

(2) The annual mass emissions of halogen atoms for a batch front-end process vent shall be calculated using Equation 16.

$$E_{halogen} = K\left[\sum_{j=1}^{n}\sum_{i=1}^{m}\left(C_{avg_j}\right)\left(L_{j,\,i}\right)\left(M_{j,\,i}\right)\right]AFR \qquad \text{[Eq. 16]}$$

where:

$E_{halogen}$ = Mass of halogen atoms, dry basis, kg/yr.

K = Constant, 0.022 $(ppmv)^{-1}$ (kg-mole per scm) (min/yr), where standard temperature is 20°C.

AFR = Annual average batch vent flow rate of the batch front-end process vent, determined according to paragraph (e) of this section, scmm.

$M_{j,i}$ = Molecular weight of halogen atom i in compound j, kg/kg-mole.

$L_{j,i}$ = Number of atoms of halogen i in compound j.

n = Number of halogenated compounds j in the batch front-end process vent.

m = Number of different halogens i in each compound j of the batch front-end process vent.

C_{avgj} = Annual average batch vent concentration of halogenated compound j in the batch front-end process vent, as determined by using Equation 17, dry basis, ppmv.

$$C_{avg_j} = \frac{\sum_{i=1}^{n}(DUR_i)(C_i)}{\sum_{i=1}^{n}(DUR_i)} \qquad \text{[Eq. 17]}$$

where:

DUR_i = Duration of type i batch emission episodes annually, hr/yr.

C_i = Average batch vent concentration of halogenated compound j in type i batch emission episode, ppmv.

n = Number of types of batch emission episodes venting from the batch front-end process vent.

* * * * *

(i) *Process changes affecting Group 2 batch front-end process vents.* Whenever process changes, as described in paragraph (i)(1) of this section, are made that affect one or more Group 2 batch front-end process vents and that could reasonably be expected to change one or more Group 2 batch front-end process vents to Group 1 batch front-end process vents or that could reasonably be expected to reduce the batch mass input limitation for one or more Group 2 batch front-end process vents, the owner or operator of the affected source shall comply with paragraphs (i)(2) and (i)(3) of this section.

(1) Examples of process changes include the changes listed in paragraphs (i)(1)(i), (i)(1)(ii), and (i)(1)(iii) of this section.

(i) For all batch front-end process vents, examples of process changes include, but are not limited to, changes in feedstock type or catalyst type; or whenever there is replacement, removal, or modification of recovery equipment considered part of the batch unit operation as specified in paragraph (a)(2) of this section; or increases in production capacity or production rate. For purposes of this paragraph, process changes do not include: Process upsets; unintentional, temporary process changes; and changes that are within the margin of variation on which the original group determination was based.

(ii) For Group 2 batch front-end process vents where the group determination and batch mass input limitation are based on the expected mix of products, the situations described in paragraphs (i)(1)(ii)(A) and (B) of this section shall be considered to be process changes.

(A) The production of combinations of products not considered in establishing the batch mass input limitation.

(B) The production of a recipe of a product with a total mass of HAP charged to the reactor during the production of a single batch of product that is higher than the total mass of HAP for the recipe used as the single highest-HAP recipe for that product in the batch mass input limitation determination.

(iii) For Group 2 batch front-end process vents where the group determination and batch mass input limitation are based on the single highest-HAP recipe (considering all products produced or processed in the batch unit operation), the production of a recipe having a total mass of HAP charged to the reactor (during the production of a single batch of product) that is higher than the total mass of HAP for the highest-HAP recipe used in the batch mass input limitation determination shall be considered to be a process change.

(2) For each batch front-end process vent affected by a process change, the owner or operator shall redetermine the group status by repeating the procedures specified in paragraphs (b) through (g) of this section, as applicable. Alternatively, engineering assessment, as described in paragraph (b)(6)(i) of this section, may be used to determine the effects of the process change.

(3) Based on the results of paragraph (i)(2) of this section, owners or operators of affected sources shall comply with either paragraph (i)(3)(i), (ii), or (iii) of this section.

(i) If the group redetermination described in paragraph (i)(2) of this section indicates that a Group 2 batch front-end process vent has become a Group 1 batch front-end process vent as a result of the process change, the owner or operator of the affected source shall submit a report as specified in § 63.492(b) and shall comply with the Group 1 provisions in §§ 63.487 through 63.492 in accordance with § 63.480(i)(2)(ii).

(ii) If the redetermination described in paragraph (i)(2) of this section indicates that a Group 2 batch front-end process vent with annual emissions less than the applicable level specified in paragraph (d) of this section, and that is in compliance with § 63.487(g), now has annual emissions greater than or equal to the applicable level specified by paragraph (d) of this section but remains a Group 2 batch front-end process vent, the owner or operator of the affected source shall comply with the provisions in paragraphs (i)(3)(ii)(A) through (C) of this section.

(A) Redetermine the batch mass input limitation;

(B) Submit a report as specified in § 63.492(c); and

(C) Comply with § 63.487(f), beginning with the year following the submittal of the report submitted according to paragraph (i)(3)(ii)(B) of this section.

(iii) If the group redetermination described in paragraph (i)(2) of this section indicates no change in group status or no change in the relation of annual emissions to the levels specified in paragraph (d) of this section, the owner or operator of the affected source shall comply with paragraphs (i)(3)(iii)(A) and (i)(3)(iii)(B) of this section.

(A) The owner or operator shall redetermine the batch mass input limitation; and

(B) The owner or operator shall submit the new batch mass input limitation in accordance with § 63.492(c).

11. Section 63.489 is amended by revising the section title and paragraphs (a) introductory text, (a)(2), (b) introductory text, (b)(4) introductory text, (b)(4)(ii), (b)(7), (c) introductory text, (d) introductory text, (d)(2), (e)(1) introductory text, (e)(1)(ii), and (e)(3); and removing paragraph (d)(3), to read as follows:

§ 63.489 Batch front-end process vents—monitoring equipment.

(a) *General requirements.* Each owner or operator of a batch front-end process vent or aggregate batch vent stream that uses a control device to comply with the requirements in § 63.487(a)(2) or § 63.487(b)(2) shall install the monitoring equipment specified in paragraph (b) of this section. All monitoring equipment shall be installed, calibrated, maintained, and operated according to the manufacturer's specifications or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately.

* * * * *

(2) Except as otherwise provided in this subpart, the owner or operator shall operate control devices such that the daily average of monitored parameters,

established as specified in paragraph (e) of this section, remains above the minimum level or below the maximum level, as appropriate.

(b) *Batch front-end process vent and aggregate batch vent stream monitoring equipment.* The monitoring equipment specified in paragraphs (b)(1) through (b)(8) of this section shall be installed as specified in paragraph (a) of this section. The parameters to be monitored are specified in Table 6 of this subpart.

* * * * *

(4) Where a scrubber is used with an incinerator, boiler, or process heater in concert with the combustion of halogenated batch front-end process vents or halogenated aggregate batch vent streams, the following monitoring equipment is required for the scrubber:

* * * * *

(ii) A flow measurement device equipped with a continuous recorder shall be located at the scrubber influent for liquid flow. Gas stream flow shall be determined using one of the procedures specified in paragraphs (b)(4)(ii)(A) through (b)(4)(ii)(C) of this section.

(A) The owner or operator may determine gas stream flow using the design blower capacity, with appropriate adjustments for pressure drop.

(B) If the scrubber is subject to regulations in 40 CFR parts 264 through 266 that have required a determination of the liquid to gas (L/G) ratio prior to the applicable compliance date for this subpart, the owner or operator may determine gas stream flow by the method that had been utilized to comply with those regulations. A determination that was conducted prior to the compliance date for this subpart may be utilized to comply with this subpart if it is still representative.

(C) The owner or operator may prepare and implement a gas stream flow determination plan that documents an appropriate method which will be used to determine the gas stream flow. The plan shall require determination of gas stream flow by a method which will at least provide a value for either a representative or the highest gas stream flow anticipated in the scrubber during representative operating conditions other than start-ups, shutdowns, or malfunctions. The plan shall include a description of the methodology to be followed and an explanation of how the selected methodology will reliably determine the gas stream flow, and a description of the records that will be maintained to document the determination of gas stream flow. The owner or operator shall maintain the plan as specified in § 63.506(a).

* * * * *

(7) Where a carbon adsorber is used, an integrating regeneration steam flow, nitrogen flow, or pressure monitoring device having an accuracy of ±10 percent of the flow rate, level, or pressure, or better, capable of recording the total regeneration steam flow or nitrogen flow, or pressure (gauge or absolute) for each regeneration cycle; and a carbon bed temperature monitoring device, capable of recording the carbon bed temperature after each regeneration and within 15 minutes of completing any cooling cycle are required.

* * * * *

(c) *Alternative monitoring parameters.* An owner or operator of a batch front-end process vent or aggregate batch vent stream may request approval to monitor parameters other than those required by paragraph (b) of this section. The request shall be submitted according to the procedures specified in § 63.492(e) and § 63.506(f). Approval shall be requested if the owner or operator:

* * * * *

(d) *Monitoring of bypass lines.* The owner or operator of a batch front-end process vent or aggregate batch vent stream using a vent system that contains bypass lines that could divert emissions away from a control device used to comply with § 63.487(a) or § 63.487(b) shall comply with either paragraph (d)(1) or (d)(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 (d).

* * * * *

(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 § 63.491(e)(4).

(e) * * *

(1) For each parameter monitored under paragraph (b) or (c) of this section, the owner or operator shall establish a level, defined as either a maximum or minimum operating parameter as denoted in Table 7 of this subpart, that indicates proper operation of the control device. The level shall be established in accordance with the procedures specified in § 63.505. The level may be based upon a prior performance test conducted for determining compliance with a regulation promulgated by the EPA, and the owner or operator is not required to conduct a performance test under § 63.490, provided that the prior performance test meets the conditions of § 63.490(b)(3).

* * * * *

(ii) For aggregate batch vent streams using a control device to comply with § 63.487(b)(2), the established level shall reflect the emission reduction requirement of 90 percent specified in § 63.487(b)(2).

* * * * *

(3) The operating day shall be defined as part of establishing the parameter monitoring level and shall be submitted with the information in paragraph (e)(2) of this section. The definition of operating day shall specify the time(s) at which an operating day begins and ends. The operating day shall not exceed 24 hours.

12. Section 63.490 is amended by:

a. Revising paragraphs (a), (b) introductory text, (b)(3), (b)(5), (c) introductory text, (c)(1)(i)(A), (c)(1)(i)(B) introductory text, (c)(1)(i)(C), (c)(1)(i)(D), (c)(1)(ii), (c)(1)(iii) introductory text, (c)(1)(iii)(A), (c)(1)(v), (c)(2) introductory text, (d)(1), (d)(2)(ii), (d)(3), (d)(4), (d)(5), (e), and (f); and

b. Removing paragraph (b)(6), to read as follows:

§ 63.490 Batch front-end process vents—performance test methods and procedures to determine compliance.

(a) *Use of a flare.* When a flare is used to comply with § 63.487(a)(1) or § 63.487(b)(1), the owner or operator of an affected source shall comply with § 63.504(c).

(b) *Exceptions to performance tests.* An owner or operator is not required to conduct a performance test when a control device specified in paragraphs (b)(1) through (b)(5) of this section is used to comply with § 63.487(a)(2).

* * * * *

(3) A control device for which a performance test was conducted for determining compliance with a regulation promulgated by the EPA and the test was conducted using the same Methods specified in this section and either no deliberate process changes have been made since the test, or the owner or operator can demonstrate that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite process changes.

* * * * *

(5) A hazardous waste incinerator for which the owner or operator has been

issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 264, subpart O, or has certified compliance with the interim status requirements of 40 CFR part 265, subpart O.

(c) *Batch front-end process vent testing and procedures for compliance with § 63.487(a)(2).* Except as provided in paragraph (a) or (b) of this section, an owner or operator using a control device to comply with § 63.487(a)(2) shall conduct a performance test using the procedures specified in paragraph (c)(1) of this section in order to determine the control efficiency of the control device. An owner or operator shall determine the percent reduction for the batch cycle using the control efficiency of the control device as specified in paragraphs (c)(2)(i) through (c)(2)(iii) of this section and the procedures specified in paragraph (c)(2) of this section. Compliance may be based on either total organic HAP or TOC. For purposes of this paragraph (c), the term ''batch emission episode'' shall have the meaning ''period of the batch emission episode selected for control,'' which may be the entire batch emission episode or may only be a portion of the batch emission episode.

(1) * * *

(i) * * *

(A) Alternatively, an owner or operator may choose to test only those periods of the batch emission episode during which the emission rate for the entire episode can be determined or during which the emissions are greater than the average emission rate of the batch emission episode. The owner or operator choosing either of these options shall develop an emission profile for the entire batch emission episode, based on either process knowledge or test data collected, to demonstrate that test periods are representative. Examples of information that could constitute process knowledge include calculations based on material balances and process stoichiometry. Previous test results may be used, provided the results are still relevant to the current batch front-end process vent conditions.

(B) Method 1 or 1A, 40 CFR part 60, appendix A, as appropriate, shall be used for selection of the sampling sites if the flow measuring device is a pitot tube, except that references to particulate matter in Method 1A do not apply for the purposes of this subpart. No traverse is necessary when Method 2A or 2D, 40 CFR part 60, appendix A is used to determine gas stream volumetric flow rate. Inlet sampling sites shall be located as specified in paragraphs (c)(1)(i)(B)(*1*) and (c)(1)(i)(B)(*2*) of this section. Outlet sampling sites shall be located at the outlet of the final control device prior to release to the atmosphere.

* * * * *

(C) Gas stream volumetric flow rate and/or average batch vent flow rate shall be determined as specified in § 63.488(e).

(D) Method 18 or Method 25A of 40 CFR part 60, appendix A, shall be used to determine the concentration of organic HAP or TOC, as appropriate. Alternatively, any other method or data that has been validated according to the applicable procedures in Method 301, 40 CFR part 63, appendix A, may be used. The use of Method 25A, 40 CFR part 60, appendix A shall conform with the requirements in paragraphs (c)(1)(i)(D)(*1*) and (c)(1)(i)(D)(*2*) of this section.

(*1*) The organic HAP used as the calibration gas for Method 25A, 40 CFR part 60, appendix A shall be the single organic HAP representing the largest percent by volume of the emissions.

(*2*) The use of Method 25A, 40 CFR part 60, appendix A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(ii) If an integrated sample is taken over the entire batch emission episode to determine the average batch vent concentration of TOC or total organic HAP, emissions per batch emission episode shall be calculated using Equations 18 and 19.

$$E_{episode,\ inlet} = K\left[\sum_{j=1}^{n}\left(C_{j,\ inlet}\right)\left(M_j\right)\right]\left(AFR_{inlet}\right)\left(T_h\right) \qquad \text{[Eq. 18]}$$

$$E_{episode,\ outlet} = K\left[\sum_{j=1}^{n}\left(C_{j,\ outlet}\right)\left(M_j\right)\right]\left(AFR_{outlet}\right)\left(T_h\right) \qquad \text{[Eq. 19]}$$

where:

$E_{episode}$ = Inlet or outlet emissions, kg/episode.

K = Constant, 2.494×10^{-6} $(ppmv)^{-1}$ (gm-mole/scm) (kg/gm) (min/hr), where standard temperature is 20°C.

C_j = Average inlet or outlet concentration of TOC or sample organic HAP component j of the gas stream for the batch emission episode, dry basis, ppmv.

M_j = Molecular weight of TOC or sample organic HAP component j of the gas stream, gm/gm-mole.

AFR = Average inlet or outlet flow rate of gas stream for the batch emission episode, dry basis, scmm.

T_h = Hours/episode.

n = Number of organic HAP in stream.

Note: Summation is not applicable if TOC emissions are being estimated using a TOC concentration measured using Method 25A, 40 CFR part 60, appendix A.

(iii) If grab samples are taken to determine the average batch vent concentration of TOC or total organic HAP, emissions shall be calculated according to paragraphs (c)(1)(iii)(A) and (c)(1)(iii)(B) of this section.

(A) For each measurement point, the emission rates shall be calculated using Equations 20 and 21.

$$E_{point,\ inlet} = K\left[\sum_{j=1}^{n} C_j M_j\right] FR_{inlet} \qquad \text{[Eq. 20]}$$

$$E_{point,\ outlet} = K\left[\sum_{j=1}^{n} C_j M_j\right] FR_{outlet} \qquad \text{[Eq. 21]}$$

where:

E_{point} = Inlet or outlet emission rate for the measurement point, kg/hr.

K = Constant, 2.494×10^{-6} $(ppmv)^{-1}$ (gm-mole/scm) (kg/gm) (min/hr), where standard temperature is 20°C.

Cj = Inlet or outlet concentration of TOC or sample organic HAP component j of the gas stream, dry basis, ppmv.

Mj = Molecular weight of TOC or sample organic HAP component j of the gas stream, gm/gm-mole.

FR = Inlet or outlet flow rate of gas stream for the measurement point, dry basis, scmm.

n = Number of organic HAP in stream. Note: Summation is not applicable if TOC emissions are being estimated using a TOC concentration measured using Method 25A, 40 CFR part 60, appendix A.

* * * * *

(v) If the batch front-end process vent entering a boiler or process heater with a design capacity less than 44 megawatts is introduced with the combustion air or as a secondary fuel, the weight-percent reduction of total organic HAP or TOC across the device shall be determined by comparing the TOC or total organic HAP in all combusted batch front-end process vents and primary and secondary fuels with the TOC or total organic HAP, respectively, exiting the combustion device.

(2) The percent reduction for the batch cycle shall be determined using Equation 25 and the control device efficiencies specified in paragraphs (c)(2)(i) through (c)(2)(iii) of this section. All information used to calculate the batch cycle percent reduction, including a definition of the batch cycle identifying all batch emission episodes, shall be recorded as specified in § 63.491(b)(2). This information shall include identification of those batch emission episodes, or portions thereof, selected for control.

$$\text{Percent Reduction} = \frac{\sum_{i=1}^{n} E_{unc} + \sum_{i=1}^{n} E_{inlet,\ con} - \sum_{i=1}^{n} (1-R)\left(E_{inlet,\ con}\right)}{\sum_{i=1}^{n} E_{unc} + \sum_{i=1}^{n} E_{inlet,\ con}} 100 \qquad \text{[Eq. 25]}$$

where:

E_{unc} = Mass rate of TOC or total organic HAP for uncontrolled batch emission episode i, kg/hr.

$E_{inlet\ con}$ = Mass rate of TOC or total organic HAP for controlled batch emission episode i at the inlet to the control device, kg/hr.

R = Control efficiency of control device as specified in paragraphs (c)(2)(i) through (c)(2)(iii) of this section.

n = Number of uncontrolled batch emission episodes, controlled batch emission episodes, and control devices. The value of n is not necessarily the same for these three items.

* * * * *

(d) * * *

(1) Sampling sites shall be located at the inlet and outlet of the scrubber or other halogen reduction device used to reduce halogen emissions in complying with § 63.487(c)(1) or at the outlet of the halogen reduction device used to reduce halogen emissions in complying with § 63.487(c)(2).

(2) * * *

(ii) Gas stream volumetric flow rate and/or average batch vent flow rate shall be determined as specified in § 63.488(e).

(3) To determine compliance with the percent reduction specified in § 63.487(c)(1), the mass emissions for any hydrogen halides and halogens present at the inlet of the scrubber or other halogen reduction device shall be summed together. The mass emissions of any hydrogen halides or halogens present at the outlet of the scrubber or other halogen reduction device shall be summed together. Percent reduction shall be determined by subtracting the outlet mass emissions from the inlet mass emissions and then dividing the result by the inlet mass emissions and multiplying by 100.

(4) To determine compliance with the emission limit specified in § 63.487(c)(2), the annual mass emissions for any hydrogen halides and halogens present at the outlet of the halogen reduction device and prior to any combustion device shall be summed together and compared to the emission limit specified in § 63.487(c)(2).

(5) The owner or operator may use any other method to demonstrate compliance if the method or data has been validated according to the applicable procedures of Method 301, 40 CFR part 63, appendix A.

(e) *Aggregate batch vent stream testing for compliance with § 63.487(b)(2).* Except as specified in paragraphs (e)(1) through (e)(2) of this section, owners or operators of aggregate batch vent streams complying with § 63.487(b)(2) shall conduct a performance test using the performance testing procedures for continuous front-end process vents in § 63.116(c).

(1) For the purposes of this subpart, when the provisions of § 63.116(c) specify that Method 18, 40 CFR part 60, appendix A shall be used, Method 18 or Method 25A, 40 CFR part 60, appendix A may be used. The use of Method 25A, 40 CFR part 60, appendix A shall conform with the requirements in paragraphs (e)(1)(i) and (e)(1)(ii) of this section.

(i) The organic HAP used as the calibration gas for Method 25A, 40 CFR part 60, appendix A shall be the single organic HAP representing the largest percent by volume of the emissions.

(ii) The use of Method 25A, 40 CFR part 60, appendix A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(2) When § 63.116(c)(4) refers to complying with an emission reduction of 98 percent, for the purposes of this subpart, the 90 percent reduction requirement specified in § 63.487(b)(2) shall apply.

(f) *Batch mass input limitation.* The batch mass input limitation required by § 63.487(g)(1) shall be determined by the owner or operator such that annual emissions for the batch front-end process vent remain less than the level specified in § 63.488(d). The batch mass input limitation required by

§ 63.487(f)(1) shall be determined by the owner or operator such that annual emissions remain at a level that ensures that the batch front-end process vent remains a Group 2 batch front-end process vent, given the actual annual flow rate for that batch front-end process vent determined according to § 63.488(e)(3). The batch mass input limitation shall be determined using the same basis, as described in § 63.488(a)(1), used to make the group determination (i.e., expected mix of products or highest-HAP recipe). The establishment of the batch mass input limitation is not dependent upon any past production or activity level.

(1) If the expected mix of products serves as the basis for the batch mass input limitation, the batch mass input limitation shall be determined based on any foreseeable combination of products that the owner or operator expects to manufacture.

(2) If the single highest-HAP recipe serves as the basis for the batch mass input limitation, the batch mass input limitation shall be determined based solely on the production of the single highest-HAP recipe, considering all products produced or processed in the batch unit operation.

13. Section 63.491 is amended by:

a. Revising paragraphs (a) introductory text, (a)(1), (a)(2), (a)(3)(i), (a)(4), (a)(7), (a)(8), (a)(9), (b) introductory text, (b)(1), (b)(2), (b)(3)(ii), (b)(3)(iii), (b)(4)(iv), (d)(1), (d)(2), (e) introductory text, (e)(1)(i), (e)(1)(ii), (e)(2) introductory text, (e)(2)(i), (e)(2)(ii), (e)(3), (e)(4) introductory text, and (e)(4)(i), and (f);

b. Adding paragraph (g); and

c. Removing and reserving paragraph (e)(4)(ii), to read as follows:

§ 63.491 Batch front-end process vents—recordkeeping requirements.

(a) *Group determination records for batch front-end process vents.* Except as provided in paragraphs (a)(7) and (a)(8) of this section, each owner or operator of an affected source shall maintain the records specified in paragraphs (a)(1) through (a)(6) of this section for each batch front-end process vent subject to the group determination procedures of § 63.488. Except for paragraph (a)(1) of this section, the records required to be maintained by this paragraph are limited to the information developed and used to make the group determination under §§ 63.488(b) through 63.488(g), as appropriate. If an owner or operator did not need to develop certain information (e.g., annual average batch vent flow rate) to determine the group status, this paragraph does not require that additional information be developed. Paragraph (a)(9) of this section specifies the recordkeeping requirements for Group 2 batch front-end process vents that are exempt from the batch mass input limitation provisions, as allowed under § 63.487(h).

(1) An identification of each unique product that has emissions from one or more batch emission episodes venting from the batch front-end process vent, along with an identification of the single highest-HAP recipe for each product and the mass of HAP fed to the reactor for that recipe.

(2) A description of, and an emission estimate for, each batch emission episode, and the total emissions associated with one batch cycle, as described in either paragraph (a)(2)(i) or (a)(2)(ii) of this section, as appropriate.

(i) If the group determination is based on the expected mix of products, records shall include the emission estimates for the single highest-HAP recipe of each unique product identified in paragraph (a)(1) of this section that was considered in making the group determination under § 63.488.

(ii) If the group determination is based on the single highest-HAP recipe (considering all products produced or processed in the batch unit operation), records shall include the emission estimates for the single highest-HAP recipe.

(3) * * *

(i) For Group 2 batch front-end process vents, emissions shall be determined at the batch mass input limitation.

* * * * *

(4) The annual average batch vent flow rate for the batch front-end process vent as determined in accordance with § 63.488(e).

* * * * *

(7) If a batch front-end process vent is subject to § 63.487(a) or § 63.487(b), none of the records in paragraphs (a)(1) through (a)(6) of this section are required.

(8) If the total annual emissions from the batch front-end process vent during the group determination are less than the appropriate level specified in § 63.488(d), only the records in paragraphs (a)(1) through (a)(3) of this section are required.

(9) For each Group 2 batch front-end process vent that is exempt from the batch mass input limitation provisions because it meets the criteria of § 63.487(h), the records specified in paragraphs (a)(9)(i) and (ii) shall be maintained.

(i) Documentation of the maximum design capacity of the EPPU; and

(ii) The mass of HAP or material that can be charged annually to the batch unit operation at the maximum design capacity.

(b) *Compliance demonstration records.* Each owner or operator of a batch front-end process vent or aggregate batch vent stream complying with § 63.487(a) or (b), shall keep the following records, as applicable, readily accessible:

(1) The annual mass emissions of halogen atoms in the batch front-end process vent or aggregate batch vent stream determined according to the procedures specified in § 63.488(h).

(2) If the owner or operator of a batch front-end process vent has chosen to comply with § 63.487(a)(2), records documenting the batch cycle percent reduction as specified in § 63.490(c)(2).

(3) * * *

(ii) All visible emission readings, heat content determinations, flow rate measurements, and exit velocity determinations made during the compliance determination required by § 63.504(c); and

(iii) Periods when all pilot flames were absent.

(4) * * *

(iv) For a scrubber or other halogen reduction device following a combustion device to control halogenated batch front-end process vents or halogenated aggregate batch vent streams, the percent reduction of total hydrogen halides and halogens, as determined under § 63.490(d)(3) or the emission limit determined under § 63.490(d)(4).

* * * * *

(d) * * *

(1) The owner or operator of a Group 2 batch front-end process vent required to comply with § 63.487(g) shall keep the following records readily accessible:

(i) Records designating the established batch mass input limitation required by § 63.487(g)(1) and specified in § 63.490(f).

(ii) Records specifying the mass of HAP or material charged to the batch unit operation.

(2) The owner or operator of a Group 2 batch front-end process vent complying with § 63.487(f) shall keep the following records readily accessible:

(i) Records designating the established batch mass input limitation required by § 63.487(f)(1) and specified in § 63.490(f).

(ii) Records specifying the mass of HAP or material charged to the batch unit operation.

(e) *Controlled batch front-end process vent continuous compliance records.* Each owner or operator of a batch front-

end process vent that has chosen to use a control device to comply with § 63.487(a) shall keep the following records readily accessible:

(1) * * *

(i) For flares, the records specified in Table 6 of this subpart shall be maintained in place of continuous records.

(ii) For carbon adsorbers, the records specified in Table 6 of this subpart shall be maintained in place of batch cycle daily averages.

(2) Records of the batch cycle daily average value of each continuously monitored parameter, except as provided in paragraph (e)(2)(iii) of this section, as calculated using the procedures specified in paragraphs (e)(2)(i) and (e)(2)(ii) of this section.

(i) The batch cycle daily average shall be calculated as the average of all parameter values measured for an operating day during those batch emission episodes, or portions thereof, in the batch cycle that the owner or operator has selected to control.

(ii) Monitoring data recorded during periods of monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments shall not be included in computing the batch cycle daily averages. In addition, monitoring data recorded during periods of non-operation of the EPPU (or specific portion thereof) resulting in cessation of organic HAP emissions, or periods of start-up, shutdown, or malfunction shall not be included in computing the batch cycle daily averages.

* * * * *

(3) Hourly records of whether the flow indicator for bypass lines specified under § 63.489(d)(1) was operating and whether a diversion was detected at any time during the hour. Also, records of the times of all periods when the vent is diverted from the control device, or the flow indicator specified in § 63.489(d)(1) is not operating.

(4) Where a seal or closure mechanism is used to comply with § 63.489(d)(2), hourly records of whether a diversion was detected at any time are not required.

(i) For compliance with § 63.489(d)(2), the owner or operator shall record whether the monthly visual inspection of the seals or closure mechanism has been done, and shall record the occurrence of all periods when the seal mechanism is broken, the bypass line 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 been broken.

(ii) [Reserved.]

* * * * *

(f) *Aggregate batch vent stream continuous compliance records.* In addition to the records specified in paragraphs (b) and (c) of this section, each owner or operator of an aggregate batch vent stream using a control device to comply with § 63.487(b)(1) or (b)(2) shall keep the following records readily accessible:.

(1) Continuous records of the equipment operating parameters specified to be monitored under § 63.489(b) and listed in Table 6 of this subpart, as applicable, or specified by the Administrator in accordance with § 63.492(e), as allowed under § 63.489(c), with the exceptions listed in paragraphs (f)(1)(i) and (f)(1)(ii) of this section.

(i) For flares, the records specified in Table 6 of this subpart shall be maintained in place of continuous records.

(ii) For carbon adsorbers, the records specified in Table 6 of this subpart shall be maintained in place of daily averages.

(2) Records of the daily average value of each continuously monitored parameter for each operating day determined according to the procedures specified in § 63.506(d).

(3) For demonstrating compliance with the monitoring of bypass lines as specified in § 63.489(d), records as specified in paragraph (e)(3) or (e)(4) of this section, as appropriate.

(g) Documentation supporting the establishment of the batch mass input limitation shall include the information specified in paragraphs (g)(1) through (g)(5) of this section, as appropriate.

(1) Identification of whether the purpose of the batch mass input limitation is to comply with § 63.487(f)(1) or (g)(1).

(2) Identification of whether the batch mass input limitation is based on the single highest-HAP recipe (considering all products) or on the expected mix of products for the batch front-end process vent as allowed under § 63.488(a)(1).

(3) Definition of the operating year, for the purposes of determining compliance with the batch mass input limitation.

(4) If the batch mass input limitation is based on the expected mix of products, the owner or operator shall provide documentation that describes as many scenarios for differing mixes of products (i.e., how many of each type of product) as the owner or operator desires the flexibility to accomplish. Alternatively, the owner or operator shall provide a description of the relationship among the mix of products that will allow a determination of compliance with the batch mass input limitation under any number of scenarios.

(5) The mass of HAP or material allowed to be charged to the batch unit operation per year under the batch mass input limitation.

14. Section 63.492 is amended by:

a. Revising paragraph (a) introductory text, (b), (c) introductory text, (c)(2), (d), (e), and (f);

b. Adding paragraphs (a)(5) and (a)(6); and

c. Removing paragraph (c)(3), to read as follows:

§ 63.492 Batch front-end process vents—reporting requirements.

(a) The owner or operator of a batch front-end process vent or aggregate batch vent stream at an affected source shall submit the information specified in paragraphs (a)(1) through (a)(6) of this section, as appropriate, as part of the Notification of Compliance Status specified in § 63.506(e)(5).

* * * * *

(5) For each Group 2 batch front-end process vent that is exempt from the batch mass input limitation provisions because it meets the criteria of § 63.487(h), the information specified in § 63.491(a)(1) through (3), and the information specified in § 63.491(a)(4) through (6) as applicable, calculated at the conditions specified in § 63.487(h).

(6) When engineering assessment has been used to estimate emissions from a batch emissions episode and the criteria specified in § 63.488(b)(6)(i)(A) or (B) have been met, the owner or operator shall submit the information demonstrating that the criteria specified in § 63.488(b)(6)(i)(A) or (B) have been met as part of the Notification of Compliance Status required by § 63.506(e)(5).

(b) Whenever a process change, as defined in § 63.488(i)(1), is made that causes a Group 2 batch front-end process vent to become a Group 1 batch front-end process vent, the owner or operator shall notify the Administrator and submit a description of the process change within 180 days after the process change is made or with the next Periodic Report, whichever is later. The owner or operator of an affected source shall comply with the Group 1 batch front-end process vent provisions in §§ 63.486 through 63.492 in accordance with § 63.480(i)(2)(ii).

(c) Whenever a process change, as defined in § 63.488(i)(1), is made that causes a Group 2 batch front-end process vent with annual emissions less than the level specified in § 63.488(d)

for which the owner or operator is required to comply with § 63.487(g) to have annual emissions greater than or equal to the level specified in § 63.488(d) but remains a Group 2 batch front-end process vent, or if a process change is made that requires the owner or operator to redetermine the batch mass input limitation as specified in § 63.488(i)(3), the owner or operator shall submit a report within 180 days after the process change is made or with the next Periodic Report, whichever is later. The following information shall be submitted:

* * * * *

(2) The batch mass input limitation determined in accordance with § 63.487(f)(1).

(d) The owner or operator is not required to submit a report of a process change if one of the conditions specified in paragraph (d)(1) or (d)(2) of this section is met.

(1) The change does not meet the description of a process change in § 63.488(i).

(2) The redetermined group status remains Group 2 for an individual batch front-end process vent with annual emissions greater than or equal to the level specified in § 63.488(d) and the batch mass input limitation does not decrease, or a Group 2 batch front-end process vent with annual emissions less than the level specified in § 63.488(d) complying with § 63.487(g) continues to have emissions less than the level specified in § 63.488(d) and the batch mass input limitation does not decrease.

(e) If an owner or operator uses a control device other than those specified in § 63.489(b) and listed in Table 6 of this subpart or requests approval to monitor a parameter other than those specified in § 63.489(b) and listed in Table 6 of this subpart, the owner or operator shall submit a description of planned reporting and recordkeeping procedures, as specified in § 63.506(f), as part of the Precompliance Report as required under § 63.506(e)(3). The Administrator will specify appropriate reporting and recordkeeping requirements as part of the review of the Precompliance Report.

(f) Owners or operators of affected sources complying with § 63.489(d), shall comply with paragraph (f)(1) or (f)(2) of this section, as appropriate.

(1) Submit reports of the times of all periods recorded under § 63.491(e)(3) when the batch front-end process vent is diverted away from the control device through a bypass line, with the next Periodic Report.

(2) Submit reports of all occurrences recorded under § 63.491(e)(4) 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 Periodic Report.

15. Section 63.493 is revised to read as follows:

§ 63.493 Back-end process provisions.

Owners and operators of new and existing affected sources shall comply with the requirements in §§ 63.494 through 63.500. Owners and operators of affected sources whose only elastomer products are latex products, liquid rubber products, or products produced in a gas-phased reaction process are not subject to the provisions of §§ 63.494 through 63.500. Section 63.494 contains residual organic HAP limitations. Compliance with these residual organic HAP limitations may be achieved by using either stripping technology, or by using control or recovery devices. If compliance with these limitations is achieved using stripping technology, the procedures to determine compliance are specified in § 63.495. If compliance with these limitations is achieved using control or recovery devices, the procedures to determine compliance are specified in § 63.496, and associated monitoring requirements are specified in § 63.497. Recordkeeping requirements are contained in § 63.498, and reporting requirements in § 63.499. Section 63.500 contains a limitation on carbon disulfide emissions from affected sources that produce styrene butadiene rubber using an emulsion process. Table 8 contains a summary of compliance alternative requirements for these sections.

16. Section 63.494 is amended by revising paragraphs (a) introductory text, (a)(1)(i), (a)(2)(i), (a)(3)(i), and (a)(4); and adding paragraph (d), to read as follows:

§ 63.494 Back-end process provisions—residual organic HAP limitations.

(a) The monthly weighted average residual organic HAP content of all grades of elastomer processed, measured after the stripping operation [or the reactor(s), if the plant has no stripper(s)] as specified in § 63.495(d), shall not exceed the limits provided in paragraphs (a)(1) through (a)(4) of this section, as applicable. Owners or operators of affected sources shall comply with the requirements of this paragraph using either stripping technology or control or recovery devices.

(1) * * *

(i) A monthly weighted average of 0.40 kg styrene per megagram (Mg) latex for existing affected sources; and

* * * * *

(2) * * *

(i) A monthly weighted average of 10 kg total organic HAP per Mg crumb rubber (dry weight) for existing affected sources; and

* * * * *

(3) * * *

(i) A monthly weighted average of 8 kg total organic HAP per Mg crumb rubber (dry weight) for existing affected sources; and

* * * * *

(4) There are no back-end process operation residual organic HAP limitations for neoprene, Hypalon™, nitrile-butadiene rubber, butyl rubber, halobutyl rubber, epichlorohydrin elastomer, and polysulfide rubber. There are also no back-end process operation residual organic HAP limitations for styrene butadiene rubber produced by any process other than a solution or emulsion process, polybutadiene rubber produced by any process other than a solution process, or ethylene-propylene rubber produced by any process other than a solution process.

* * * * *

(d) If the owner or operator complies with the residual organic HAP limitations in paragraph (a) of this section using a flare, the owner or operator of an affected source shall comply with the requirements in § 63.504(c).

17. Section 63.495 is amended by revising paragraphs (b)(2)(i), (b)(2)(ii), and (b)(5), to read as follows:

§ 63.495 Back-end process provisions—procedures to determine compliance using stripping technology.

* * * * *

(b) * * *

(2) * * *

(i) If a stripper operated in batch mode is used, at least one representative sample is to be taken from every batch of elastomer produced, at the location specified in paragraph (d) of this section, and identified by elastomer type and by the date and time the batch is completed.

(ii) If a stripper operated in continuous mode is used, at least one representative sample is to be taken each operating day. The sample is to be taken at the location specified in paragraph (d) of this section, and identified by elastomer type and by the date and time the sample was taken.

* * * * *

(5) The monthly weighted average shall be determined using the equation

in paragraph (f) of this section. All samples taken and analyzed during the month shall be used in the determination of the monthly weighted average, except samples taken during periods of start-up, shutdown, or malfunction.

* * * * *

18. Section 63.496 is amended by revising paragraphs (b) introductory text, (b)(5)(i), (b)(5)(iii), (b)(6)(iv), (b)(7) introductory text, (b)(7)(i), (b)(7)(iv), (b)(8) introductory text, and (c)(1); and adding paragraph (b)(7)(vi), to read as follows:

§ 63.496 Back-end process provisions—procedures to determine compliance using control or recovery devices.

* * * * *

(b) Compliance shall be demonstrated using the provisions in paragraphs (b)(1) through (b)(8) of this section, as applicable.

* * * * *

(5) * * *

(i) Method 1 or 1A of 40 CFR part 60, appendix A, as appropriate, shall be used for selection of the sampling sites. Sampling sites for inlet emissions shall be located as specified in paragraphs (b)(5)(i)(A) or (b)(5)(i)(B) of this section. Sampling sites for outlet emissions shall be located at the outlet of the control or recovery device.

(A) The inlet sampling site shall be located at the exit of the back-end process unit operation before any opportunity for emission to the atmosphere [with the exception of equipment in compliance with the requirements in §§ 63.502(a) through 63.502(m)], and before any control or recovery device.

(B) If back-end process vent streams are combined prior to being routed to control or recovery devices, the inlet sampling site may be for the combined stream, as long as there is no opportunity for emission to the atmosphere [with the exception of equipment in compliance with the requirements in §§ 63.502(a) through 63.502(m)] from any of the streams prior to being combined.

* * * * *

(iii) To determine the inlet and outlet total organic HAP concentrations, the owner or operator shall use Method 18 or Method 25A of 40 CFR part 60, appendix A. Alternatively, any other method or data that has been validated according to the applicable procedures in Method 301, 40 CFR part 63, appendix A may be used. The minimum sampling time for each run shall be in accordance with paragraph (b)(1) of this section, during which either an integrated sample or grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals during the run, with the time between samples no greater than 15 minutes.

* * * * *

(6) * * *

(iv) The outlet total organic HAP emissions associated with the back-end process unit operation shall be calculated using Equation 30, as shown in paragraph (b)(8) of this section.

(7) An owner or operator is not required to conduct a source test to determine the outlet organic HAP emissions if any control device specified in paragraphs (b)(7)(i) through (b)(7)(vi) of this section is used. For these devices, the inlet emissions associated with the back-end process unit operation shall be determined in accordance with paragraph (b)(5) of this section, and the outlet emissions shall be calculated using the equation in paragraph (b)(8) of this section.

(i) A flare. The owner or operator shall demonstrate compliance as provided in § 63.504(c).

* * * * *

(iv) A control device for which a performance test was conducted for determining compliance with a regulation promulgated by the EPA and the test was conducted using the same Methods specified in this section and either no deliberate process changes have been made since the test, or the owner or operator can demonstrate that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite process changes.

* * * * *

(vi) 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.

(8) If one of the control devices listed in paragraph (b)(6) or (b)(7) of this section is used, the outlet emissions shall be calculated using Equation 30.

$$E_o = E_i(1 - R) \qquad \text{[Eq. 30]}$$

where:

E_o=Mass rate of total organic HAP at the outlet of the control or recovery device, dry basis, kg/hr.

E_i=Mass rate of total organic HAP at the inlet of the control or recovery device, dry basis, kg/hr, determined using the procedures in paragraph (b)(5)(iv) of this section.

R=Control efficiency of control device, as specified in paragraph (b)(8)(i), (ii), or (iii) of this section.

* * * * *

(c) * * *

(1) For each test run, the residual organic HAP content, adjusted for the control or recovery device emission reduction, shall be calculated using Equation 31.

$$\text{HAPCONT}_{run} = \frac{(C)(P) - (E_{i,\,run}) + (E_{o,\,run})}{(P)} \qquad \text{[Eq. 31]}$$

where:

HAPCONT_{run}=Residual organic HAP content, kg organic HAP per kg elastomer (latex or dry crumb rubber).

C=Total uncontrolled organic HAP content, determined in accordance with paragraph (b)(3) of this section, kg organic HAP per kg latex or dry crumb rubber.

P=Weight of latex or dry crumb rubber processed during test run.

$E_{i,run}$=Mass rate of total organic HAP at the inlet of the control or recovery device, dry basis, kg per test run.

$E_{o,run}$=Mass rate of total organic HAP at the outlet of the control or recovery device, dry basis, kg per test run.

* * * * *

19. Section 63.497 is amended by revising paragraphs (a) introductory text, (a)(6), (c), and (d) introductory text; and removing paragraph (d)(3), to read as follows:

§ 63.497 Back-end process provisions—monitoring provisions for control and recovery devices.

(a) An owner or operator complying with the residual organic HAP limitations in § 63.494(a) using control or recovery devices, or a combination of stripping and control or recovery devices, shall install the monitoring equipment specified in paragraphs (a)(1)

through (a)(6) of this section, as appropriate.

* * * * *

(6) For a carbon adsorber, an integrating regeneration steam flow, nitrogen flow, or pressure monitoring device having an accuracy of at least ±10 percent of the flow rate, level, or pressure, capable of recording the total regeneration steam flow or nitrogen flow, or pressure (gauge or absolute) for each regeneration cycle; and a carbon bed temperature monitoring device, capable of recording the carbon bed temperature after each regeneration and within 15 minutes of completing any cooling cycle are required.

* * * * *

(c) The owner or operator shall establish a level, defined as either a maximum or minimum operating parameter, that indicates proper operation of the control or recovery device for each parameter monitored under paragraphs (a)(1) through (a)(6) of this section. This level is determined in accordance with § 63.505. The established level, along with supporting documentation, shall be submitted in the Notification of Compliance Status or the operating permit application, as required in § 63.506(e)(5) or (e)(8), respectively. The owner or operator shall operate control and recovery devices so that the daily average value is above or below the established level, as required, to ensure continued compliance with the standard, except as otherwise stated in this subpart.

(d) The owner or operator of an affected source with a controlled back-end process vent using a vent system that contains bypass lines that could divert a vent stream away from the control or recovery device used to comply with § 63.494(a) shall comply with paragraph (d)(1) or (d)(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.

* * * * *

20. Section 63.498 is amended by revising paragraphs (a), (d) introductory text, (d)(1) through (d)(4), (d)(5) introductory text, (d)(5)(i), (d)(5)(ii)(B), (d)(5)(iv) introductory text, and (d)(5)(iv)(A); and removing and reserving paragraph (d)(5)(iv)(B), to read as follows:

§ 63.498 Back-end process provisions—recordkeeping.

(a) Each owner or operator shall maintain the records specified in paragraphs (b) through (d) of this section, as appropriate.

* * * * *

(d) Each owner or operator of a back-end process operation using control or recovery devices to comply with an organic HAP emission limitation in § 63.494(a) shall maintain the records specified in paragraphs (d)(1) through (d)(5) of this section. The recordkeeping requirements contained in paragraphs (d)(1) through (d)4) pertain to the results of the testing required by § 63.496(b), for each of the three required test runs.

(1) The uncontrolled residual organic HAP content in the latex or dry crumb rubber, as required to be determined by § 63.496(b)(3), including the test results of the analysis;

(2) The total quantity of material (weight of latex or dry crumb rubber) processed during the test run, recorded in accordance with § 63.496(b)(4);

(3) The organic HAP emissions at the inlet and outlet of the control or recovery device, determined in accordance with § 63.496(b)(5) through (b)(8), including all test results and calculations.

(4) The residual organic HAP content, adjusted for the control or recovery device emission reduction, determined in accordance with § 63.496(c)(1).

(5) Each owner or operator using a control or recovery device shall keep the following records readily accessible:

(i) Continuous records of the equipment operating parameters specified to be monitored under § 63.497(a) or specified by the Administrator in accordance with § 63.497(b). For flares, the records specified in Table 6 shall be maintained in place of continuous records.

(ii) * * *

(B) Monitoring data recorded during periods of monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments shall not be included in computing the hourly or daily averages. In addition, monitoring data recorded during periods of non-operation of the EPPU (or specific portion thereof) resulting in cessation of organic HAP emissions or during periods of start-up, shutdown, or malfunction shall not be included in computing the hourly or daily averages. Records shall be kept of the times and durations of all such periods and any other periods of process or control device operation when monitors are not operating.

* * * * *

(iv) Where a seal mechanism is used to comply with § 63.497(d)(2), hourly records of flow are not required.

(A) For compliance with § 63.497(d)(2), the owner or operator shall record whether the monthly visual inspection of the seals or closure mechanisms has been done, and shall record instances 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.

(B) [Reserved.]

21. Section 63.499 is amended by revising paragraphs (a), (b)(2), (c) introductory text, (c)(3), and (d) introductory text, to read as follows:

§ 63.499 Back-end process provisions—reporting.

(a) The owner or operator of an affected source with back-end process operations shall submit the information required in paragraphs (a)(1) through (a)(3) of this section, for each back-end process operation at the affected source, as part of the Notification of Compliance Status specified in § 63.506(e)(5).

(1) The type of elastomer product processed in the back-end operation.

(2) The type of process (solution process, emulsion process, etc.)

(3) If the back-end process operation is subject to an emission limitation in § 63.494(a), whether compliance will be achieved by stripping technology, or by control or recovery devices.

(b) * * *

(2) For organic HAP content/stripper monitoring parameter re-determinations, and the addition of new grades, the information specified in § 63.498(c)(1) shall be submitted in the next periodic report specified in § 63.506(e)(6).

(c) Each owner or operator of an affected source with a back-end process operation control or recovery device that shall comply with an emission limitation in § 63.494(a) shall submit the information specified in paragraphs (c)(1) through (c)(3) of this section as part of the Notification of Compliance Status specified in § 63.506(e)(5).

* * * * *

(3) The information specified in paragraphs (c)(3)(i) when using a flare, and the information specified in paragraph (c)(3)(ii) of this section when using a boiler or process heater.

(i) The flare design (i.e., steam-assisted, air-assisted, or non-assisted); all visible emission readings, heat content determinations, flow rate measurements, and exit velocity determinations made during the compliance determination; and all periods during the compliance determination when the pilot flame is absent.

(ii) A description of the location at which the vent stream is introduced into the boiler or process heater.

(d) Whenever a process change, as defined in § 63.496(d), is made that causes the redetermination of the compliance status for the back-end process operations, the owner or operator shall submit a report within 180 days after the process change as specified in § 63.506(e)(7)(iii). The report shall include:

* * * * *

22. Section 63.500 is amended by revising paragraphs (a)(3), (c)(1) introductory text, (c)(1)(iii) introductory text, (c)(2) introductory text, and (d)(2), to read as follows:

§ 63.500 Back-end process provisions—carbon disulfide limitations for styrene butadiene rubber by emulsion processes.

(a) * * *

(3) The owner or operator shall operate the process in accordance with a validated standard operating procedure at all times when styrene butadiene rubber is being produced using a sulfur containing shortstop agent. If a standard operating procedure is changed, it shall be re-validated.

* * * * *

(c) * * *

(1) The owner or operator may choose to conduct a performance test, using the procedures in paragraphs (c)(1)(i) through (c)(1)(iii) of this section to demonstrate compliance with the carbon disulfide concentration limitation in paragraph (a) of this section. One test shall be conducted for each standard operating procedure.

* * * * *

(iii) To determine compliance with the carbon disulfide concentration limit in paragraph (a) of this section, the owner or operator shall use Method 18 or Method 25A of 40 CFR part 60, appendix A to measure carbon disulfide. Alternatively, any other method or data that has been validated according to the applicable procedures in Method 301, 40 CFR part 63, appendix A, may be used. The following procedures shall be used to calculate carbon disulfide concentration:

* * * * *

(2) The owner or operator may use engineering assessment to demonstrate compliance with the carbon disulfide concentration limitation in paragraph (a) of this section. Engineering assessment includes, but is not limited to, the following:

* * * * *

(d) * * *

(2) A description of the standard operating procedure used during the testing. This description shall include, at a minimum, an identification of the sulfur containing shortstop agent added to the styrene butadiene rubber prior to the dryers, an identification of the point and time in the process where the sulfur containing shortstop agent is added, and an identification of the amount of sulfur containing shortstop agent added per unit of latex.

* * * * *

23. Section 63.501 is amended by revising paragraphs (a), (b), and (c)(1); and removing paragraph (d), to read as follows:

§ 63.501 Wastewater provisions.

(a) Except as specified in paragraph (c) of this section, the owner or operator of each affected source shall comply with the requirements of §§ 63.132 through 63.147 for each process wastewater stream originating at an affected source, with the requirements of § 63.148 for leak inspection provisions, and with the requirements of § 63.149 for equipment that is subject to § 63.149, with the differences noted in paragraphs (a)(1) through (a)(23) of this section. Further, the owner or operator of each affected source shall comply with the requirements of § 63.105(a) for maintenance wastewater, as specified in paragraph (b) of this section.

(1) When the determination of equivalence criteria in § 63.102(b) is referred to in §§ 63.132, 63.133, and 63.137, the provisions in § 63.6(g) shall apply for the purposes of this subpart.

(2) When the storage vessel requirements contained in §§ 63.119 through 63.123 are referred to in §§ 63.132 through 63.149, §§ 63.119 through 63.123 are applicable, with the exception of the differences referred to in § 63.484, for the purposes of this subpart.

(3) Owners and operators of affected sources are not required to comply with the requirements in § 63.132(b)(1) and § 63.132(d). Owners and operators of new affected sources, as defined in this subpart, shall comply with the requirements for existing sources in §§ 63.132 through 63.149.

(4) When § 63.146(a) requires the submission of a request for approval to monitor alternative parameters according to the procedures specified in § 63.151(g) or § 63.152(e), owners or operators requesting to monitor alternative parameters shall follow the procedures specified in § 63.506(g), for the purposes of this subpart.

(5) When § 63.147(d) requires owners or operators to keep records of the daily average value of each continuously monitored parameter for each operating day as specified in § 63.152(f), owners and operators shall instead keep records of the daily average value of each continuously monitored parameter as specified in § 63.506(d), for the purposes of this subpart.

(6) When §§ 63.132 through 63.149 refer to an ''existing source,'' the term ''existing affected source,'' as defined in § 63.480(a)(3) shall apply, for the purposes of this subpart.

(7) When §§ 63.132 through 63.149 refer to a ''new source,'' the term ''new affected source,'' as defined in § 63.480(a)(4) shall apply, for the purposes of this subpart.

(8) Whenever §§ 63.132 through 63.149 refer to a ''chemical manufacturing process unit,'' the term ''elastomer product process unit,'' (or EPPU) as defined in § 63.482, shall apply for the purposes of this subpart. In addition, when § 63.149 refers to ''a chemical manufacturing process unit that meets the criteria of § 63.100(b) of subpart F of this part,'' the term ''an EPPU as defined in § 63.482(b)'' shall apply for the purposes of this subpart.

(9) When § 63.132(a) and (b) refer to the ''applicable dates specified in § 63.100 of subpart F of this part,'' the compliance dates specified in § 63.481 shall apply, for the purposes of this subpart.

(10) When §§ 63.132 through 63.149 refer to Table 9 or Table 36 of subpart G of this part, the owner or operator is only required to consider organic HAP listed in Table 9 or Table 36 of subpart G of this part that are also listed on Table 5 of this subpart, for the purposes of this subpart. Owners and operators are exempt from all requirements in §§ 63.132 through 63.149 that pertain solely and exclusively to organic HAP listed on Table 8 of subpart G of this subpart. In addition, when §§ 63.132 through 63.149 refer to List 1, List 2, and/or List 3, as listed in Table 36 of subpart G of this part, the owner or operator is only required to consider organic HAP that are also listed on Table 5 of this subpart, for the purposes of this subpart.

(11) Whenever §§ 63.132 through 63.147 refer to a Group 1 wastewater stream or a Group 2 wastewater stream, the definitions of these terms contained in § 63.482 shall apply, for the purposes of this subpart.

(12) When § 63.149(d) refers to ''§ 63.100(f) of subpart F'' the phrase ''§ 63.480(c)'' shall apply for the purposes of this subpart. In addition, where § 63.149(d) states ''and the item of equipment is not otherwise exempt from controls by the provisions of subparts A, F, G, or H of this part'', the phrase ''and the item of equipment is

not otherwise exempt from controls by the provisions of subparts A, F, G, H, or U of this part,'' shall apply for the purposes of this subpart.

(13) When § 63.149(e)(1) and (e)(2) refer to ''a chemical manufacturing process unit subject to the new source requirements of 40 CFR 63.100(l)(1) or 40 CFR § 63.100 (l)(2),'' the phrase ''an EPPU that is part of a new affected source or that is a new affected source,'' shall apply for the purposes of this subpart.

(14) When the Notification of Compliance Status requirements contained in § 63.152(b) are referred to in §§ 63.138 and 63.146, the Notification of Compliance Status requirements contained in § 63.506(e)(5) shall apply for the purposes of this subpart. In addition, when §§ 63.138 and 63.146 require that information be reported according to § 63.152(b) in the Notification of Compliance Status, owners or operators of affected sources shall report the specified information in the Notification of Compliance Status required by § 63.506(e)(5), for the purposes of this subpart.

(15) When the Periodic Report requirements contained in § 63.152(c) are referred to in § 63.146, the Periodic Report requirements contained in § 63.506(e)(6) shall apply for the purposes of this subpart. In addition, when § 63.146 requires that information be reported in the Periodic Reports required in § 63.152(c), owners or operators of affected sources shall report the specified information in the Periodic Reports required in § 63.506(e)(6), for the purposes of this subpart.

(16) When the term ''range'' is used in §§ 63.132 through 63.149, the term ''level'' shall apply instead, for the purposes of this subpart. This level shall be determined using the procedures specified in § 63.505.

(17) When § 63.143(f) specifies that owners or operators shall establish the range that indicates proper operation of the treatment process or control device, the owner or operator shall instead comply with the requirements of § 63.505(b)(1), (c), or (d) for establishing parameter level maximums/minimums, for the purposes of this subpart.

(18) When § 63.146(b)(7) and § 63.146(b)(8) require that ''the information on parameter ranges specified in § 63.152(b)(2)'' be reported in the Notification of Compliance Status, owners and operators of affected sources are instead required to report the information on parameter levels in the Notification of Compliance Status as specified in § 63.506(e)(5)(ii), for the purposes of this subpart.

(19) For the purposes of this subpart, the owner or operator of an affected source is not required to include process wastewater streams that contain styrene when conducting performance tests for the purposes of calculating the required mass removal (RMR) or the actual mass removal (AMR) under the provisions described in § 63.145(f) or § 63.145(g). For purposes of this paragraph, a process wastewater stream is considered to contain styrene if the wastewater stream meets the requirements in paragraph (a)(19)(i), (ii), or (iii) of this section:

(i) The wastewater stream originates at equipment that produces styrene butadiene rubber by solution;

(ii) The wastewater stream originates at equipment that produces styrene butadiene rubber by emulsion; or

(iii) The wastewater stream originates at equipment that produces styrene butadiene latex.

(20) When the provisions of § 63.139(c)(1)(ii), § 63.145(d)(4), or § 63.145(i)(2) specify that Method 18, 40 CFR part 60, appendix A shall be used, Method 18 or Method 25A, 40 CFR part 60, appendix A may be used for the purposes of this subpart. The use of Method 25A, 40 CFR part 60, appendix A shall conform with the requirements in paragraphs (a)(20)(i) and (a)(20)(ii) of this section.

(i) The organic HAP used as the calibration gas for Method 25A, 40 CFR part 60, appendix A shall be the single organic HAP representing the largest percent by volume of the emissions.

(ii) The use of Method 25A, 40 CFR part 60, appendix A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(21) In § 63.145(j), instead of the reference to § 63.11(b), and instead of § 63.145(j)(1) and § 63.145(j)(2), the requirements in § 63.504(c) shall apply.

(22) The owner or operator of a facility which receives a Group 1 wastewater stream, or a residual removed from a Group 1 wastewater stream, for treatment pursuant to § 63.132(g) is subject to the requirements of § 63.132(g) with the differences identified in this section, and is not subject to subpart DD of this part, with respect to the received material.

(23) When § 63.132(g) refers to ''§§ 63.133 through 63.137'' or ''§§ 63.133 through 63.147'', the provisions in this section 63.501 shall apply, for the purposes of this subpart.

(b) Except for those streams exempted by paragraph (c) of this section, the owner or operator of each affected source shall comply with the requirements for maintenance wastewater in § 63.105, except that when § 63.105(a) refers to ''organic HAPs,'' the definition of organic HAP in § 63.482 shall apply for the purposes of this subpart.

(c) * * *

(1) Back-end wastewater streams originating from equipment whose only elastomer products are latex products.

* * * * *

24. Section 63.502 is amended by revising the section title and paragraphs (a), (b) introductory text, (b)(1), (b)(2), (b)(3), (b)(5), (b)(6), (b)(7), (c), (d), (e), (f), (g), (h), (i), and (j); and adding paragraphs (k), (l), (m), and (n), to read as follows:

§ 63.502 Equipment leak and heat exchange system provisions.

(a) *Equipment leak provisions.* The owner or operator of each affected source, shall comply with the requirements of subpart H of this part, with the exceptions noted in paragraphs (b) through (m) of this section.

(b) Surge control vessels and bottoms receivers described in paragraphs (b)(1) through (b)(7) of this section are exempt from the requirements contained in § 63.170.

(1) Surge control vessels and bottoms receivers that receive only styrene-butadiene latex;

(2) Surge control vessels and bottoms receivers that receive latex products other than styrene-butadiene latex, located downstream of the stripping operations;

(3) Surge control vessels and bottoms receivers that receive only high conversion latex products;

* * * * *

(5) Surge control vessels and bottoms receivers that receive only styrene;

(6) Surge control vessels and bottoms receivers that receive only acrylamide; and

(7) Surge control vessels and bottoms receivers that receive only epichlorohydrin.

(c) The compliance date for the equipment leak provisions in this section is provided in § 63.481(d). Whenever subpart H of this part refers to the compliance dates specified in any paragraph contained in § 63.100, the compliance dates listed in § 63.481(d) shall instead apply, for the purposes of this subpart. When § 63.182(c)(4) refers to ''sources subject to subpart F,'' the phrase ''sources subject to this subpart'' shall apply, for the purposes of this subpart. In addition, extensions of compliance dates are addressed by

§ 63.481(e) instead of by § 63.182(a)(6), for the purposes of this subpart.

(d) For an affected source producing polybutadiene rubber or styrene butadiene rubber by solution, the conditions in paragraphs (d)(1), (d)(2), and (d)(3) of this section are applicable.

(1) Indications of liquids dripping, as defined in subpart H of this part, from bleed ports in pumps and agitator seals in light liquid service, shall not be considered a leak. For the purposes of this subpart, a ''bleed port'' is a technologically-required feature of the pump or seal whereby polymer fluid used to provide lubrication and/or cooling of the pump or agitator shaft exits the pump, thereby resulting in a visible dripping of fluid.

(2) For reciprocating pumps in heavy liquid service, owners and operators are not required to comply with the requirements in § 63.169 and associated recordkeeping and reporting requirements.

(3) Reciprocating pumps in light liquid service are exempt from § 63.163 and associated recordkeeping and reporting requirements, if recasting the distance piece or reciprocating pump replacement would be necessary to comply with that section.

(e) Owners and operators of an affected source subject to this subpart are not required to submit the Initial Notification required by § 63.182(a)(1) and § 63.182(b).

(f) As specified in § 63.506(e)(5), the Notification of Compliance Status required by § 63.182(a)(2) and § 63.182(c) shall be submitted within 150 days (rather than 90 days) of the applicable compliance date specified in § 63.481(d) for the equipment leak provisions.

(g) The information specified by § 63.182(a)(3) and § 63.182(d) (i.e., Periodic Reports) shall be submitted as part of the Periodic Reports required by § 63.506(e)(6).

(h) If specific items of equipment, comprising part of a process unit subject to this subpart, are managed by different administrative organizations (e.g., different companies, affiliates, departments, divisions, etc.), those items of equipment may be aggregated with any EPPU within the affected source for all purposes under subpart H of this part, providing there is no delay in achieving the applicable compliance date.

(i) When § 63.166(b)(4)(i) refers to Table 9 of subpart G of this part, the owner or operator is only required to consider organic HAP listed on Table 9 of subpart G of this subpart that are also listed on Table 5 of this subpart.

(j) When the provisions of subpart H of this part specify that Method 18, 40 CFR part 60, appendix A shall be used, either Method 18 or Method 25A, 40 CFR part 60, appendix A may be used for the purposes of this subpart. The use of Method 25A, 40 CFR part 60, appendix A shall conform with the requirements in paragraphs (j)(1) and (j)(2) of this section.

(1) The organic HAP used as the calibration gas for Method 25A, 40 CFR part 60, appendix A shall be the single organic HAP representing the largest percent by volume of emissions.

(2) The use of Method 25A, 40 CFR part 63, appendix A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(k) An owner or operator using a flare to comply with the requirements of this section shall conduct a compliance demonstration as specified in § 63.504(c).

(l) When the term ''equipment'' is used in subpart H of this part, the definition of this term in § 63.482(b) shall apply for the purposes of this subpart.

(m) The phrase ''the provisions of subparts F, I, or U of this part'' shall apply instead of the phrase ''the provisions of subpart F or I of this part'' throughout §§ 63.163 and 63.168, for the purposes of this subpart. In addition, the phrase ''subparts F, I, and U'' shall apply instead of the phrase ''subparts F and I'' in § 63.174(c)(2)(iii), for the purposes of this subpart.

(n) *Heat exchange system provisions.* The owner or operator of each affected source shall comply with the requirements of § 63.104 for heat exchange systems, with the exceptions noted in paragraphs (n)(1) through (n)(5) of this section.

(1) When the term ''chemical manufacturing process unit'' is used in § 63.104, the term ''elastomer product process unit'' (or EPPU) shall apply for the purposes of this subpart, with the exception noted in paragraph (n)(2) of this section.

(2) When the phrase ''a chemical manufacturing process unit meeting the conditions of § 63.100(b)(1) through (b)(3) of this subpart, except for chemical manufacturing process units meeting the condition specified in § 63.100(c) of this subpart'' is used in § 63.104(a), the term ''an EPPU, except for EPPUs meeting the condition specified in § 63.480(b)'' shall apply for the purposes of this subpart.

(3) When § 63.104 refers to Table 4 of subpart F of this part or Table 9 of subpart G of this part, the owner or operator is only required to consider organic HAP listed on Table 5 of this subpart.

(4) When § 63.104(c)(3) and § 63.104(f)(1) specify that the monitoring plan and records required by § 63.104(f)(1)(i) through (f)(1)(iv) shall be kept as specified in § 63.103(c), the provisions of § 63.506(a) and § 63.506(h) shall apply for the purposes of this subpart.

(5) When § 63.104(f)(2) requires information to be reported in the Periodic Reports required by § 63.152(c), the owner or operator shall instead report the information specified in § 63.104(f)(2) in the Periodic Reports required by § 63.506(e)(6), for the purposes of this subpart.

(6) The compliance date for heat exchange systems subject to the provisions of this section is specified in § 63.481(d)(6).

25. Section 63.504 is revised (including the section title) to read as follows:

§ 63.504 Additional requirements for performance testing .

(a) Performance testing shall be conducted in accordance with § 63.7(a)(1), (a)(3), (d), (e)(1), (e)(2), (e)(4), (g), and (h), with the exceptions specified in paragraphs (a)(1) through (a)(5) of this section and the additions specified in paragraph (b) of this section. Sections 63.484 through 63.501 also contain specific testing requirements.

(1) Performance tests shall be conducted according to the provisions of § 63.7(e)(1) and (e)(2), except that performance tests shall be conducted at maximum representative operating conditions achievable during one of the time periods described in paragraph (a)(1)(i) of this section, without causing any of the situations described in paragraph (a)(1)(ii) of this section to occur.

(i) The 6-month period that ends 2 months before the Notification of Compliance Status is due, according to § 63.506(e)(5); or the 6-month period that begins 3 months before the performance test and ends 3 months after the performance test.

(ii) Causing damage to equipment; necessitating that the owner or operator make product that does not meet an existing specification for sale to a customer; or necessitating that the owner or operator make product in excess of demand.

(2) References in § 63.7(g) to the Notification of Compliance Status requirements in § 63.9(h) shall refer to the requirements in § 63.506(e)(5).

(3) Because the site-specific test plans in § 63.7(c)(3) are not required, § 63.7(h)(4)(ii) is not applicable.

(4) The owner or operator shall notify the Administrator of the intent to conduct a performance test at least 30 days before the performance test is scheduled, to allow the Administrator the opportunity to have an observer present during the test. If after 30 days notice for an initially scheduled performance test, there is a delay (due to operational problems, etc.) in conducting the scheduled performance test, the owner or operator of an affected facility shall notify the Administrator as soon as possible of any delay in the original test date, either by providing at least 7 days prior notice of the rescheduled date of the performance test, or by arranging a rescheduled date with the Administrator by mutual agreement.

(5) Performance tests shall be performed no later than 150 days after the compliance dates specified in this subpart (i.e., in time for the results to be included in the Notification of Compliance Status), rather than according to the time periods in § 63.7(a)(2).

(b) Data shall be reduced in accordance with the EPA approved methods specified in the applicable subpart or, if other test methods are used, the data and methods shall be validated according to the protocol in Method 301, 40 CFR part 63, appendix A of this part.

(c) Notwithstanding any other provision of this subpart, if an owner or operator of an affected source uses a flare to comply with any of the requirements of this subpart, the owner or operator shall comply with paragraphs (c)(1) through (c)(3) of this section. The owner or operator is not required to conduct a performance test to determine percent emission reduction or outlet organic HAP or TOC concentration. If a compliance demonstration has been conducted previously for a flare, using the techniques specified in paragraphs (c)(1) through (c)(3) of this section, that compliance demonstration may be used to satisfy the requirements of this paragraph 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) Conduct a visible emission test using the techniques specified in § 63.11(b)(4);

(2) Determine the net heating value of the gas being combusted, using the techniques specified in § 63.11(b)(6); and

(3) Determine the exit velocity using the techniques specified in either § 63.11(b)(7)(i) (and § 63.11(b)(7)(iii), where applicable) or § 63.11(b)(8), as appropriate.

26. Section 63.505 is amended by:

a. Revising paragraphs (a), (b) introductory text, (b)(2), (b)(3) introductory text, (b)(3)(i)(A) through (b)(3)(i)(D), (b)(3)(ii), (c), (d), (e) introductory text, (e)(3), (g)(1) introductory text, (g)(1)(ii), (g)(1)(iii), (g)(2) introductory text, (g)(2)(ii), (h)(1) introductory text, and (h)(2) introductory text;

b. Removing and reserving paragraphs (b)(1) and (f);

c. Removing paragraph (b)(3)(i)(E); and

d. Adding paragraphs (g)(1)(v) and (g)(3), to read as follows:

§ 63.505 Parameter monitoring levels and excursions.

(a) *Establishment of parameter monitoring levels.* The owner or operator of a control or recovery device that has one or more parameter monitoring level requirements specified under this subpart shall establish a maximum or minimum level for each measured parameter. If a performance test is required by this subpart for a control device, the owner or operator shall use the procedures in either paragraph (b) or (c) of this section to establish the parameter monitoring level(s). If a performance test is not required by this subpart for a control device, the owner or operator may use the procedures in paragraph (b), (c), or (d) of this section to establish the parameter monitoring levels. When using the procedures specified in paragraph (c) or (d) of this section, the owner or operator shall submit the information specified in § 63.506(e)(3)(vii) for review and approval, as part of the Precompliance Report.

(1) The owner or operator shall operate control and recovery devices such that the daily average of monitored parameters remains above the minimum established level or below the maximum established level, except as otherwise stated in this subpart.

(2) As specified in § A63.506(e)(5), all established levels, along with their supporting documentation and the definition of an operating day, shall be submitted as part of the Notification of Compliance Status.

(3) Nothing in this section shall be construed to allow a monitoring parameter excursion caused by an activity that violates other applicable provisions of subparts A, F, G, or H of this part.

(b) *Establishment of parameter monitoring levels based exclusively on performance tests.* In cases where a performance test is required by this subpart, or the owner or operator of the affected source elects to do a performance test in accordance with the provisions of this subpart, and an owner or operator elects to establish a parameter monitoring level for a control, recovery, or recapture device based exclusively on parameter values measured during the performance test, the owner or operator of the affected source shall comply with the procedures in paragraphs (b)(1) through (b)(4) of this section, as applicable.

(1) [Reserved.]

(2) *Back-end process operations using a control or recovery device to comply with §§ 63.493 through 63.500 and continuous front-end process vents.* During initial compliance testing, the appropriate parameter shall be continuously monitored during the required 1-hour runs. The monitoring level(s) shall then be established as the average of the maximum (or minimum) point values from the three test runs. The average of the maximum values shall be used when establishing a maximum level, and the average of the minimum values shall be used when establishing a minimum level.

(3) *Batch front-end process vents.* The monitoring level(s) shall be established using the procedures specified in either paragraph (b)(3)(i) or (b)(3)(ii) of this section. The procedures specified in this paragraph (b)(3) may only be used if the batch emission episodes, or portions thereof, selected to be controlled were tested, and monitoring data were collected, during the entire period in which emissions were vented to the control device, as specified in § 63.490(c)(1)(i). If the owner or operator chose to test only a portion of the batch emission episode, or portion thereof, selected to be controlled, the procedures in paragraph (c) of this section shall be used.

(i) * * *

(A) The average monitored parameter value shall be calculated for each batch emission episode, or portion thereof, in the batch cycle selected to be controlled. The average shall be based on all values measured during the required performance test.

(B) If the level to be established is a maximum operating parameter, the level shall be defined as the minimum of the average parameter values of the batch emission episodes, or portions thereof, in the batch cycle selected to be controlled (i.e., identify the emission

episode, or portion thereof, which requires the lowest parameter value in order to assure compliance. The average parameter value that is necessary to assure compliance for that emission episode, or portion thereof, shall be the level for all emission episodes, or portions thereof, in the batch cycle, that are selected to be controlled).

(C) If the level to be established is a minimum operating parameter, the level shall be defined as the maximum of the average parameter values of the batch emission episodes, or portions thereof, in the batch cycle selected to be controlled (i.e., identify the emission episode, or portion thereof, which requires the highest parameter value in order to assure compliance. The average parameter value that is necessary to assure compliance for that emission episode, or portion thereof, shall be the level for all emission episodes, or portions thereof, in the batch cycle, that are selected to be controlled).

(D) Alternatively, an average monitored parameter value shall be calculated for the entire batch cycle based on all values measured during each batch emission episode, or portion thereof, selected to be controlled.

(ii) Instead of establishing a single level for the batch cycle, as described in paragraph (b)(3)(i) of this section, an owner or operator may establish separate levels for each batch emission episode, or portion thereof, selected to be controlled. Each level shall be determined as specified in paragraph (b)(3)(i)(A) of this section.

* * * * *

(c) *Establishment of parameter monitoring levels based on performance tests, supplemented by engineering assessments and/or manufacturer's recommendations.* In cases where a performance test is required by this subpart, or the owner or operator elects to do a performance test in accordance with the provisions of this subpart, and the owner or operator elects to establish a parameter monitoring level for a control, recovery, or recapture device under this paragraph (c), the owner or operator shall supplement the parameter values measured during the performance test with engineering assessments and/or manufacturer's recommendations. Performance testing is not required to be conducted over the entire range of expected parameter values.

(d) *Establishment of parameter monitoring based on engineering assessments and/or manufacturer's recommendations.* In cases where a performance test is not required by this subpart and an owner or operator elects to establish a parameter monitoring level for a control, recovery, or recapture device under this paragraph (d), the determination of the parameter monitoring level shall be based exclusively on engineering assessments and/or manufacturer's recommendations.

(e) *Demonstration of compliance with back-end process provisions using stripper parameter monitoring.* If the owner or operator is demonstrating compliance with § 63.495 using stripper parameter monitoring, stripper parameter levels shall be established for each grade in accordance with paragraphs (e)(1) and (e)(2) of this section. A single set of stripper parameter levels may be representative of multiple grades.

* * * * *

(3) After the initial determinations, an owner or operator may add a grade, with corresponding stripper parameter levels, using the procedures in paragraphs (e)(1) and (e)(2) of this section. The results of this determination shall be submitted in the next periodic report.

* * * * *

(f) [Reserved.]

(g) * * *

(1) With respect to storage vessels (where the applicable monitoring plan specifies continuous monitoring), continuous front-end process vents, aggregate batch vent streams, back-end process operations complying through the use of control or recovery devices, and process wastewater streams, an excursion means any of the three cases listed in paragraphs (g)(1)(i) through (g)(1)(iii) of this section. For a control or recovery device where multiple parameters are monitored, if one or more of the parameters meets the excursion criteria in paragraphs (g)(1)(i) through (g)(1)(iii) of this section, this is considered a single excursion for the control or recovery device. For each excursion, the owner or operator shall be deemed out of compliance with the provisions of this subpart, except as provided in paragraph (i) of this section.

* * * * *

(ii) When the period of control or recovery device operation, with the exception noted in paragraph (g)(1)(v) of this section, is 4 hours or greater in an operating day and monitoring data are insufficient, as defined in paragraph (g)(1)(iv) of this section, to constitute a valid hour of data for at least 75 percent of the operating hours.

(iii) When the period of control or recovery device operation, with the exception noted in paragraph (g)(1)(v) of this section, is less than 4 hours in an operating day and more than two of the hours during the period of operation do not constitute a valid hour of data due to insufficient monitoring data, as defined in paragraph (g)(1)(iv) of this section.

* * * * *

(v) The periods listed in paragraphs (g)(1)(v)(A) through (g)(1)(v)(E) of this section are not considered to be part of the period of control or recovery device operation, for the purposes of paragraphs (g)(1)(ii) and (g)(1)(iii) of this section.

(A) Monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments;

(B) Start-ups;

(C) Shutdowns;

(D) Malfunctions; or

(E) Periods of non-operation of the affected source (or portion thereof), resulting in cessation of the emissions to which the monitoring applies.

(2) With respect to batch front-end process vents, an excursion means one of the two cases listed in paragraphs (g)(2)(i) and (g)(2)(ii) of this section. For a control device where multiple parameters are monitored, if one or more of the parameters meets the excursion criteria in either paragraph (g)(2)(i) or (g)(2)(ii) of this section, this is considered a single excursion for the control device. For each excursion, the owner or operator shall be deemed out of compliance with the provisions of this subpart, except as provided in paragraph (i) of this section.

* * * * *

(ii) When monitoring data are insufficient for an operating day. Monitoring data shall be considered insufficient when measured values are not available for at least 75 percent of the 15-minute periods when batch emission episodes selected to be controlled are being vented to the control device during the operating day, using the procedures specified in paragraphs (g)(2)(ii)(A) through (g)(2)(ii)(D) of this section.

(A) Determine the total amount of time during the operating day when batch emission episodes selected to be controlled are being vented to the control device.

(B) Subtract the time during the periods listed in paragraphs (g)(2)(ii)(B)(*1*) through (g)(2)(ii)(B)(*4*) of this section from the total amount of time determined in paragraph (g)(2)(ii)(A) of this section, to obtain the operating time used to determine if monitoring data are insufficient.

(*1*) Monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments;

(*2*) Start-ups;

(*3*) Shutdowns; or

(4) Malfunctions.

(C) Determine the total number of 15-minute periods in the operating time used to determine if monitoring data are insufficient, as was determined in accordance with paragraph (g)(2)(ii)(B) of this section.

(D) If measured values are not available for at least 75 percent of the total number of 15-minute periods determined in paragraph (g)(2)(ii)(C) of this section, the monitoring data are insufficient for the operating day.

(3) For storage vessels where the applicable monitoring plan does not specify continuous monitoring, an excursion is defined in paragraph (g)(3)(i) or (ii) of this section, as applicable. For a control or recovery device where multiple parameters are monitored, if one or more of the parameters meets the excursion criteria, this is considered a single excursion for the control or recovery device. For each excursion, the owner or operator shall be deemed out of compliance with the provisions of this subpart, except as provided in paragraph (i) of this section.

(i) If the monitoring plan specifies monitoring a parameter and recording its value at specific intervals (such as every 15 minutes or every hour), either of the cases listed in paragraph (g)(3)(i)(A) or (g)(3)(i)(B) of this section is considered a single excursion for the control device.

(A) When the average value of one or more parameters, averaged over the duration of the filling period for the storage vessel, is above the maximum level or below the minimum level established for the given parameters.

(B) When monitoring data are insufficient. Monitoring data shall be considered insufficient when measured values are not available for at least 75 percent of the specific intervals at which parameters are to be monitored and recorded, according to the storage vessel's monitoring plan, during the filling period for the storage vessel.

(ii) If the monitoring plan does not specify monitoring a parameter and recording its value at specific intervals (for example, if the relevant operating requirement is to exchange a disposable carbon canister before expiration of its rated service life), the monitoring plan shall define an excursion in terms of the relevant operating requirement.

(h) * * *

(1) With respect to back-end process operations complying through the use of stripping technology, and demonstrating compliance by sampling, an excursion means one of the two cases listed in paragraphs (h)(1)(i) and (h)(1)(ii) of this section. For each excursion, the owner or operator shall be deemed out of compliance with the provisions of this subpart, except as provided in paragraph (i) of this section.

* * * * *

(2) With respect to back-end process operations complying through the use of stripping technology, and demonstrating compliance by stripper parameter monitoring, an excursion means one of the three cases listed in paragraphs (h)(2)(i), (h)(2)(ii), and (h)(2)(iii) of this section. For each excursion, the owner or operator shall be deemed out of compliance with the provisions of this subpart, except as provided in paragraph (i) of this section.

* * * * *

27. Section 63.506 is amended by:

a. Revising paragraphs (a), (b)(1), (b)(2), (d) introductory text, (d)(2), (d)(3), (d)(6), (d)(7), (d)(8), (d)(9), (e) introductory text, (e)(1), (e)(2), (e)(3), (e)(4) introductory text, (e)(4)(i), (e)(4)(ii) introductory text, (e)(4)(ii)(B), (e)(4)(ii)(D), (e)(4)(ii)(F)(*1*), (e)(4)(ii)(F)(*2*), (e)(4)(ii)(F)(*4*), (e)(4)(ii)(F)(*5*), (e)(4)(ii)(G)(*1*), (e)(4)(ii)(H)(*2*), (e)(4)(ii)(H)(*3*)(*i*), (e)(4)(ii)(H)(*4*)(i), (e)(4)(ii)(I), (e)(4)(ii)(J), (e)(4)(ii)(K), (e)(4)(ii)(L)(*2*), (e)(4)(iii), (e)(4)(iv) introductory text, (e)(4)(iv)(A) introductory text, (e)(4)(iv)(B) introductory text, (e)(4)(iv)(C), (e)(5) introductory text, (e)(5)(i) introductory text, (e)(5)(i)(A), (e)(5)(ii) introductory text, (e)(5)(iii), (e)(5)(v), (e)(5)(vii) through (e)(5)(ix), (e)(6) introductory text, (e)(6)(i), (e)(6)(ii), (e)(6)(iii)(A), (e)(6)(iii)(B), (e)(6)(iii)(D) introductory text, (e)(6)(iii)(D)(*2*), (e)(6)(iii)(D)(*3*), (e)(6)(iii)(D)(*4*), (e)(6)(iv), (e)(6)(v)(B), (e)(6)(vi) through (e)(6)(xi), (e)(7), (e)(8), (f) introductory text, (f)(3) introductory text, (g) introductory text, (g)(1), (g)(2)(ii)(D), (g)(3) introductory text, (g)(3)(i)(A), (g)(4), (h) introductory text, (h)(1) introductory text, (h)(1)(ii)(B), (h)(1)(iv), (h)(1)(vi) introductory text, (h)(1)(vi)(B), (h)(1)(vi)(C), (h)(2)(i), (h)(2)(iii), and (h)(2)(iv)(A);

b. Removing paragraphs (b)(1)(i)(D), and (d)(10);

c. Removing and reserving paragraphs (c), (d)(4), (d)(5), (e)(5)(iv), and (e)(6)(iii)(C); and

d. Adding paragraphs (e)(4)(ii)(N), (e)(4)(iv)(D), (e)(5)(x) through (e)(5)(xii), (e)(6)(iii)(D)(*5*), (e)(6)(xii), (e)(7)(iv), (e)(7)(v), and (h)(1)(vi)(D), to read as follows:

§ 63.506 General recordkeeping and reporting provisions.

(a) *Data retention.* Unless otherwise specified in this subpart, the owner or operator of an affected source shall keep copies of all applicable records and reports required by this subpart for at least 5 years, as specified in paragraph (a)(1) of this section, with the exception listed in paragraph (a)(2) of this section.

(1) All applicable records shall be maintained in such a manner that they can be readily accessed. The most recent 6 months of records shall be retained on site or shall be accessible from a central location by computer or other means that provide access within 2 hours after a request. The remaining 4 and one-half years of records may be retained offsite. Records may be maintained in hard copy or computer-readable form including, but not limited to, on microfilm, computer, floppy disk, magnetic tape, or microfiche.

(2) If an owner or operator submits copies of reports to the appropriate EPA Regional Office, the owner or operator is not required to maintain copies of reports. If the EPA Regional Office has waived the requirement of § 63.10(a)(4)(ii) for submittal of copies of reports, the owner or operator is not required to maintain copies of those reports.

(b) * * *

(1) *Start-up, shutdown, and malfunction plan.* The owner or operator of an affected source shall develop and implement a written start-up, shutdown, and malfunction plan as specified in § 63.6(e)(3). This plan shall describe, in detail, procedures for operating and maintaining the affected source during periods of start-up, shutdown, and malfunction and a program for corrective action for malfunctioning process and air pollution control equipment used to comply with this subpart. 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, through the Precompliance Report or a supplement to the Precompliance Report, that the monitoring system would be damaged or destroyed if it were not shut down during the start-up, shutdown, or malfunction. The affected source shall keep the start-up, shutdown, and malfunction plan on-site. Records associated with the plan shall be kept as specified in paragraphs (b)(1)(i)(A) through (b)(1)(i)(C) of this section. Reports related to the plan shall be submitted as specified in paragraph (b)(1)(ii) of this section.

(i) *Records of start-up, shutdown, and malfunction.* The owner or operator shall keep the records specified in paragraphs (b)(1)(i)(A) through (b)(1)(i)(C) of this section. 1

(A) 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 § 63.480(j)(4)) occur.

(B) For each start-up, shutdown, or malfunction during which excess emissions (as defined in § 63.480(j)(4)) occur, records reflecting whether the procedures specified in the affected source's start-up, shutdown, and malfunction plan were followed, and documentation of actions taken that are not consistent with the plan. For example, if a start-up, shutdown, and malfunction plan includes procedures for routing a 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.

(C) Records specified in paragraphs (b)(1)(i)(A) through (b)(1)(i)(B) of this section are not required if they pertain solely to Group 2 emission points that are not included in an emissions average.

(ii) *Reports of start-up, shutdown, and malfunction.* For the purposes of this subpart, the semiannual start-up, shutdown, and malfunction reports shall be submitted on the same schedule as the Periodic Reports required under paragraph (e)(6) of this section instead of the schedule specified in § 63.10(d)(5)(i). The reports shall include the information specified in paragraphs (b)(1)(i)(A) through (b)(1)(i)(B) of this section and shall contain the name, title, and signature of the owner or operator or other responsible official who is certifying its accuracy.

(2) *Application for approval of construction or reconstruction.* For new affected sources, each owner or operator shall comply with the provisions in § 63.5 regarding construction and reconstruction, excluding the provisions specified in § 63.5(d)(1)(ii)(H), (d)(1)(iii), (d)(2), and (d)(3)(ii).

(c) [Reserved.]

(d) *Recordkeeping and documentation.* Owners or operators required to keep continuous records shall keep records as specified in paragraphs (d)(1) through (d)(7) of this section, unless an alternative recordkeeping system has been requested and approved as specified in paragraph (g) of this section, and except as provided in paragraph (h) of this section. If a monitoring plan for storage vessels pursuant to § 63.484(k) requires continuous records, the monitoring plan shall specify which provisions, if any, of paragraphs (d)(1) through (d)(7) of this section apply. As described in § 63.484(k), certain storage vessels are not required to keep continuous records as specified in this paragraph. Owners and operators of such storage vessels shall keep records as specified in the monitoring plan required by § 63.484(k). Paragraphs (d)(8) and (d)(9) of this section specify documentation requirements.

* * * * *

(2) The owner or operator shall record either each measured data value or block average values for 1 hour or shorter periods calculated from all measured data values during each period. If values are measured more frequently than once per minute, a single value for each minute may be used to calculate the hourly (or shorter period) block average instead of all measured values. Owners or operators of batch front-end process vents shall record each measured data value.

(3) Daily average (or batch cycle daily average) values of each continuously monitored parameter shall be calculated for each operating day as specified in paragraphs (d)(3)(i) through (d)(3)(ii) of this section, except as specified in paragraphs (d)(6) and (d)(7) of this section.

(i) The daily average value or batch cycle daily average shall be calculated as the average of all parameter values recorded during the operating day, except as specified in paragraph (d)(7) of this section. For batch front-end process vents, as specified in § 63.491(e)(2)(i), only parameter values measured during those batch emission episodes, or portions thereof, in the batch cycle that the owner or operator has chosen to control shall be used to calculate the average. The calculated average shall cover a 24-hour period if operation is continuous, or the number of hours of operation per operating day if operation is not continuous.

(ii) The operating day shall be the period that the owner or operator specifies in the operating permit or the Notification of Compliance Status for purposes of determining daily average values or batch cycle daily average values of monitored parameters.

(4) [Reserved.]

(5) [Reserved.]

(6) *Records required when all recorded values are within the established limits.* If all recorded values for a monitored parameter during an operating day are above the minimum level or below the maximum level established in the Notification of Compliance Status or operating permit, the owner or operator may record that all values were above the minimum level or below the maximum level rather than calculating and recording a daily average (or batch cycle daily average) for that operating day.

(7) Monitoring data recorded during periods identified in paragraphs (d)(7)(i) through (d)(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 or recovery 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; or

(v) Periods of non-operation of the affected source (or portion thereof), resulting in cessation of the emissions to which the monitoring applies.

(8) 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.

(9) The owner or operator of an affected source granted a waiver under § 63.10(f) shall maintain the information, if any, specified by the Administrator as a condition of the waiver of recordkeeping or reporting requirements.

(e) *Reporting and notification.* In addition to the reports and notifications required by subpart A, as specified in Table 1 of this subpart, the owner or operator of an affected source shall prepare and submit the reports listed in paragraphs (e)(3) through (e)(8) of this section, as applicable. All reports required by this subpart, and the schedule for their submittal, are listed in Table 9 of this subpart.

(1) Owners and operators shall not be in violation of the reporting requirements of this subpart for failing to submit information required to be included in a specified report if the owner or operator meets the requirements in paragraphs (e)(1)(i) through (e)(1)(iii) of this section. Examples of circumstances where this

paragraph may apply include information related to newly-added equipment or emission points, changes in the process, changes in equipment required or utilized for compliance with the requirements of this subpart, or changes in methods or equipment for monitoring, recordkeeping, or reporting.

(i) The information was not known in time for inclusion in the report specified by this subpart;

(ii) The owner or operator has been diligent in obtaining the information; and

(iii) The owner or operator submits a report according to the provisions of paragraphs (e)(1)(iii)(A) through (e)(1)(iii)(C) of this section.

(A) If this subpart expressly provides for supplements to the report in which the information is required, the owner or operator shall submit the information as a supplement to that report. The information shall be submitted no later than 60 days after it is obtained, unless otherwise specified in this subpart.

(B) If this subpart does not expressly provide for supplements, but the owner or operator must submit a request for revision of an operating permit pursuant to part 70 or part 71, due to circumstances to which the information pertains, the owner or operator shall submit the information with the request for revision to the operating permit.

(C) In any case not addressed by paragraph (e)(1)(iii)(A) or (e)(1)(iii)(B) of this paragraph, the owner or operator shall submit the information with the first Periodic Report, as required by this subpart, which has a submission deadline at least 60 days after the information is obtained.

(2) All reports required under this subpart shall be sent to the Administrator at the appropriate address listed in § 63.13. If acceptable to both the Administrator and the owner or operator of a source, reports may be submitted on electronic media.

(3) *Precompliance Report.* Owners or operators of affected sources requesting an extension for compliance; requesting approval to use alternative monitoring parameters, alternative continuous monitoring and recordkeeping, or alternative controls; requesting approval to use engineering assessment to estimate emissions from a batch emissions episode, as described in § 63.488(b)(6)(i); wishing to establish parameter monitoring levels according to the procedures contained in § 63.505(c) or (d); or requesting approval to incorporate a provision for ceasing to collect monitoring data, during a start-up, shutdown, or malfunction, into the start-up, shutdown, and malfunction plan, when that monitoring equipment would be damaged if it did not cease to collect monitoring data, as permitted under § 63.480(j)(3), shall submit a Precompliance Report according to the schedule described in paragraph (e)(3)(i) of this section. The Precompliance Report shall contain the information specified in paragraphs (e)(3)(ii) through (e)(3)(viii) of this section, as appropriate.

(i) *Submittal dates.* The Precompliance Report shall be submitted to the Administrator no later than 12 months prior to the compliance date. Unless the Administrator objects to a request submitted in the Precompliance Report within 45 days after its receipt, the request shall be deemed approved. For new affected sources, the Precompliance Report shall be submitted to the Administrator with the application for approval of construction or reconstruction required in paragraph (b)(2) of this section. Supplements to the Precompliance Report may be submitted as specified in paragraph (e)(3)(ix) of this section.

(ii) A request for an extension for compliance, as specified in § 63.481(e), may be submitted in the Precompliance Report. The request for a compliance extension shall include the data outlined in § 63.6(i)(6)(i)(A), (B), and (D), as required in § 63.481(e)(1).

(iii) The alternative monitoring parameter information required in paragraph (f) of this section shall be submitted in the Precompliance Report if, for any emission point, the owner or operator of an affected source seeks to comply through the use of a control technique other than those for which monitoring parameters are specified in this subpart or in subpart G of this part, or seeks to comply by monitoring a different parameter than those specified in this subpart or in subpart G of this part.

(iv) If the affected source seeks to comply using alternative continuous monitoring and recordkeeping as specified in paragraph (g) of this section, the owner or operator shall submit a request for approval in the Precompliance Report.

(v) The owner or operator shall report the intent to use alternative controls to comply with the provisions of this subpart in the Precompliance Report. The Administrator may deem alternative controls to be equivalent to the controls required by the standard, under the procedures outlined in § 63.6(g).

(vi) If a request for approval to use engineering assessment to estimate emissions from a batch emissions episode, as described in § 63.488(b)(6)(i)(C) is being made, the information required by § 63.488(b)(6)(iii)(B) shall be submitted in the Precompliance Report.

(vii) If an owner or operator establishes parameter monitoring levels according to the procedures contained in § 63.505(c) or (d), the following information shall be submitted in the Precompliance Report:

(A) Identification of which procedures (i.e., § 63.505(c) or (d)) are to be used; and

(B) A description of how the parameter monitoring level is to be established. If the procedures in § 63.505(c) are to be used, a description of how performance test data will be used shall be included.

(viii) If the owner or operator is requesting approval to incorporate a provision for ceasing to collect monitoring data, during a start-up, shutdown, or malfunction, into the start-up, shutdown, and malfunction plan, when that monitoring equipment would be damaged if it did not cease to collect monitoring data, the information specified in paragraphs (e)(3)(viii)(A) and (B) shall be supplied in the Precompliance Report or in a supplement to the Precompliance Report. The Administrator shall evaluate the supporting documentation and shall approve the request only if, in the Administrator's judgment, the specific monitoring equipment would be damaged by the contemporaneous start-up, shutdown, or malfunction.

(A) Documentation supporting a claim that the monitoring equipment would be damaged by the contemporaneous start-up, shutdown, or malfunction; and

(B) A request to incorporate such a provision for ceasing to collect monitoring data during a start-up, shutdown, or malfunction, into the start-up, shutdown, and malfunction plan.

(ix) Supplements to the Precompliance Report may be submitted as specified in paragraph (e)(3)(ix)(A), or (e)(3)(ix)(B) of this section. Unless the Administrator objects to a request submitted in a supplement to the Precompliance Report within 45 days after its receipt, the request shall be deemed approved.

(A) Supplements to the Precompliance Report may be submitted to clarify or modify information previously submitted.

(B) Supplements to the Precompliance Report may be submitted to request approval to use alternative monitoring parameters, as specified in paragraph (e)(3)(iii) of this section; to use alternative continuous monitoring and recordkeeping, as specified in paragraph (e)(3)(iv) of this section; to use

alternative controls, as specified in paragraph (e)(3)(v) of this section; to use engineering assessment to estimate emissions from a batch emissions episode, as specified in paragraph (e)(3)(vi) of this section; to establish parameter monitoring levels according to the procedures contained in § 63.505(c) or (d), as specified in paragraph (e)(3)(vii) of this section; or to include a provision for ceasing to collect monitoring data during a start-up, shutdown, or malfunction, in the start-up, shutdown, and malfunction plan, when that monitoring equipment would be damaged if it did not cease to collect monitoring data, as specified in paragraph (e)(3)(viii) of this section.

(4) *Emissions Averaging Plan.* For all existing affected sources using emissions averaging, an Emissions Averaging Plan shall be submitted for approval according to the schedule and procedures described in paragraph (e)(4)(i) of this section. The Emissions Averaging Plan shall contain the information specified in paragraph (e)(4)(ii) of this section, unless the information required in paragraph (e)(4)(ii) of this section is submitted with an operating permit application. An owner or operator of an affected source who submits an operating permit application instead of an Emissions Averaging Plan shall submit the information specified in paragraph (e)(8) of this section. In addition, a supplement to the Emissions Averaging Plan, as required under paragraph (e)(4)(iii) of this section, is to be submitted whenever additional alternative controls or operating scenarios may be used to comply with this subpart. Updates to the Emissions Averaging Plan shall be submitted in accordance with paragraph (e)(4)(iv) of this section.

(i) *Submittal and approval.* The Emissions Averaging Plan shall be submitted no later than 18 months prior to the compliance date, and is subject to Administrator approval. The Administrator shall determine within 120 days whether the Emissions Averaging Plan submitted presents sufficient information. The Administrator shall either approve the Emissions Averaging Plan, request changes, or request that the owner or operator submit additional information. Once the Administrator receives sufficient information, the Administrator shall approve, disapprove, or request changes to the plan within 120 days.

(ii) *Information required.* The Emissions Averaging Plan shall contain the information listed in paragraphs (e)(4)(ii)(A) through (e)(4)(ii)(N) of this section for all emission points included in an emissions average.

* * * * *

(B) The required information shall include the projected emission debits and credits for each emission point and the sum for the emission points involved in the average calculated according to § 63.503. The projected credits shall be greater than or equal to the projected debits, as required under § 63.503(e)(3).

* * * * *

(D) The required information shall include the specific identification of each emission point affected by a pollution prevention measure. To be considered a pollution prevention measure, the criteria in § 63.503(j)(1) shall be met. If the same pollution prevention measure reduces or eliminates emissions from multiple emission points in the average, the owner or operator shall identify each of these emission points.

* * * * *

(F) * * *

(*1*) The required documentation shall include the values of the parameters used to determine whether the emission point is Group 1 or Group 2. Where a TRE index value is used for continuous front-end process vent group determination, the estimated or measured values of the parameters used in the TRE equation in § 63.115(d) and the resulting TRE index value shall be submitted.

(*2*) The required documentation shall include the estimated values of all parameters needed for input to the emission debit and credit calculations in § 63.503(g) and (h). These parameter values shall be specified in the affected source's Emissions Averaging Plan (or operating permit) as enforceable operating conditions. Changes to these parameters shall be reported in an update to the Emissions Averaging Plan, as required by paragraph (e)(4)(iv)(B)(*2*) of this section.

* * * * *

(*4*) The required documentation shall include the anticipated nominal efficiency if a control technology achieving a greater percent emission reduction than the efficiency of the reference control technology is or will be applied to the emission point. The procedures in § 63.503(i) shall be followed to apply for a nominal efficiency, and the report specified in paragraph (e)(7)(ii) of this section shall be submitted with the Emissions Averaging Plan as specified in paragraph (e)(7)(ii)(A) of this section.

(*5*) The required documentation shall include the monitoring plan specified in § 63.122(b), to include the information specified in § 63.120(d)(2)(i) and in either § 63.120(d)(2)(ii) or (d)(2)(iii) for each storage vessel controlled with a closed-vent system using a control device other than a flare.

(G) * * *

(*1*) Each continuous front-end process vent subject to § 63.485 controlled by a pollution prevention measure or control technique for which monitoring parameters or inspection procedures are not specified in § 63.114; and

* * * * *

(H) * * *

(*2*) The required documentation shall include the estimated values of all parameters needed for input to the wastewater emission credit and debit calculations in § 63.503(g)(5) and (h)(5). These parameter values shall be specified in the affected source's Emissions Averaging Plan (or operating permit) as enforceable operating conditions. Changes to these parameters shall be reported as required by paragraph (e)(4)(iv)(B)(*2*) of this section.

(3) * * *

(*i*) A control technology that achieves an emission reduction less than or equal to the emission reduction that would otherwise have been achieved by a stream stripper designed to the specifications found in § 63.138(g) is or will be applied to the wastewater stream, or

* * * * *

(*4*) * * *

(*i*) A control technology that achieves an emission reduction greater than the emission reduction that would have been achieved by a steam stripper designed to the specifications found in § 63.138(g) is or will be applied to the wastewater stream, or

* * * * *

(I) For each pollution prevention measure, treatment process, or control device used to reduce air emissions of organic HAP from wastewater and for which no monitoring parameters or inspection procedures are specified in § 63.143, the information specified in paragraph (f) of this section (Alternative Monitoring Parameters) shall be included in the Emissions Averaging Plan.

(J) The required information shall include documentation of the data required by estimated values of all parameters needed for input to the emission debit and credit calculations in § 63.503(g) and (h) for each process back-end operation included in an emissions average. These values shall be specified in the affected source's Emissions Averaging Plan (or operating permit) as enforceable operating

conditions. Changes to these parameters shall be reported as required by paragraph (e)(4)(iv)(B)(*2*) of this section.

(K) The required information shall include documentation of the information required by § 63.503(k). The documentation shall demonstrate that the emissions from the emission points proposed to be included in the average will not result in greater hazard or, at the option of the Administrator, greater risk to human health or the environment than if the emission points were not included in an emissions average.

(L) * * *

(*2*) The required information shall include the estimated values of all parameters needed for input to the emission debit and credit calculations in § 63.503(g) and (h). These parameter values shall be specified in the affected source's Emissions Averaging Plan (or operating permit) as enforceable operating conditions. Changes to these parameters shall be reported as required by paragraph (e)(4)(iv) of this section.

* * * * *

(N) The required information shall include documentation of the data required by § 63.503(k). The documentation shall demonstrate that the emissions from the emission points proposed to be included in the emissions average will not result in greater hazard or, at the option of the Administrator, greater risk to human health or the environment than if the emission points were not included in an emissions average.

(iii) *Supplement to Emissions Averaging Plan.* The owner or operator required to prepare an Emissions Averaging Plan under paragraph (e)(4) of this section shall also prepare a supplement to the Emissions Averaging Plan for any additional alternative controls or operating scenarios that may be used to achieve compliance.

(iv) *Updates to Emissions Averaging Plan.* The owner or operator of an affected source required to submit an Emissions Averaging Plan under paragraph (e)(4) of this section shall also submit written updates of the Emissions Averaging Plan to the Administrator for approval under the circumstances described in paragraphs (e)(4)(iv)(A) through (e)(4)(iv)(C) of this section unless the relevant information has been included and submitted in an operating permit application or amendment.

(A) The owner or operator who plans to make a change listed in either paragraph (e)(4)(iv)(A)(*1*) or (e)(4)(iv)(A)(*2*) of this section shall submit an Emissions Averaging Plan update at least 120 days prior to making the change.

* * * * *

(B) The owner or operator who has made a change as defined in paragraph (e)(4)(iv)(B)(*1*) or (e)(4)(iv)(B)(*2*) of this section shall submit an Emissions Averaging Plan update within 90 days after the information regarding the change is known to the affected source. The update may be submitted in the next quarterly periodic report if the change is made after the date the Notification of Compliance Status is due.

* * * * *

(C) The owner or operator who plans to make a change listed in either paragraph (e)(4)(iv)(A)(*1*) or (e)(4)(iv)(A)(*2*) of this section shall submit an Emissions Averaging Plan update at least 120 days prior to making the change.

(D) The Administrator shall approve or request changes to the Emissions Averaging Plan update within 120 days of receipt of sufficient information regarding the change for emission points included in emissions averages.

(5) *Notification of Compliance Status.* For existing and new affected sources, a Notification of Compliance Status shall be submitted. For equipment leaks subject to § 63.502, the owner or operator shall submit the information required in § 63.182(c) in the Notification of Compliance Status within 150 days after the first applicable compliance date for equipment leaks in the affected source, and an update shall be provided in the first Periodic Report that is due at least 150 days after each subsequent applicable compliance date for equipment leaks in the affected source. For all other emission points, including heat exchange systems, the Notification of Compliance Status shall contain the information listed in paragraphs (e)(5)(i) through (e)(5)(xii) of this section, as applicable, and shall be submitted no later than 150 days after the compliance dates specified in this subpart.

(i) The results of any emission point group determinations, process section applicability determinations, performance tests, inspections, continuous monitoring system performance evaluations, any other information used to demonstrate compliance, values of monitored parameters established during performance tests, and any other information required to be included in the Notification of Compliance Status under § 63.481(k), § 63.122, and § 63.484 for storage vessels, § 63.117 for continuous front-end process vents, § 63.492 for batch front-end process vents, § 63.499 for back-end process operations, § 63.146 for process wastewater, and § 63.503 for emission points included in an emissions average. In addition, the owner or operator of an affected source shall comply with paragraphs (e)(5)(i)(A) and (e)(5)(i)(B) of this section.

(A) For performance tests, group determinations, and process section applicability determinations that are based on measurements, the Notification of Compliance Status shall include one complete test report, as described in paragraph (e)(5)(i)(B) of this section, for each test method used for a particular kind of emission point. For additional tests performed for the same kind of emission point using the same method, the results and any other information, from the test report, that is requested on a case-by-case basis by the Administrator shall be submitted, but a complete test report is not required.

* * * * *

(ii) For each monitored parameter for which a maximum or minimum level is required to be established under § 63.114(e) and § 63.485(k) for continuous front-end process vents, § 63.489 for batch front-end process vents and aggregate batch vent streams, § 63.497 for back-end process operations, § 63.143(f) for process wastewater, § 63.503(m) for emission points in emissions averages, paragraph (e)(8) of this section, or paragraph (f) of this section, the information specified in paragraphs (e)(5)(ii)(A) through (e)(5)(ii)(E) of this section shall be submitted in the Notification of Compliance Status, unless this information has been established and provided in the operating permit application. Further, as described in § 63.484(k), for those storage vessels for which the monitoring plan required by § 63.484(k) specifies compliance with the provisions of § 63.505, the owner or operator shall provide the information specified in paragraphs (e)(5)(ii)(A) through (e)(5)(ii)(D) of this section for each monitoring parameter, unless this information has been established and provided in the operating permit application. For those storage vessels for which the monitoring plan required by § 63.484(k) does not require compliance with the provisions of § 63.505, the owner or operator shall provide the information specified in § 63.120(d)(3) as part of the Notification of Compliance Status, unless this information has been established and provided in the operating permit application.

* * * * *

(iii) For emission points included in an emissions average, the Notification of Compliance Status shall contain the values of all parameters needed for input to the emission credit and debit equations in § 63.503(g) and (h), calculated or measured according to the procedures in § 63.503(g) and (h), and the resulting calculation of credits and debits for the first quarter of the year. The first quarter begins on the compliance date specified.

(iv) [Reserved.]

(v) The determination of applicability for flexible operation units as specified in § 63.480(f).

* * * * *

(vii) The results for each predominant use determination made under § 63.480(g), for storage vessels assigned to an affected source subject to this subpart.

(viii) The results for each predominant use determination made under § 63.480(h) for recovery operations equipment assigned to an affected source subject to this subpart.

(ix) For owners and operators of Group 2 batch front-end process vents establishing a batch mass input limitation, as specified in § 63.490(f), the affected source's operating year for purposes of determining compliance with the batch mass input limitation.

(x) If any emission point is subject to this subpart and to other standards as specified in § 63.481(k), and if the provisions of § 63.481(k) allow the owner or operator to choose which testing, monitoring, reporting, and recordkeeping provisions will be followed, then the Notification of Compliance Status shall indicate which rule's requirements will be followed for testing, monitoring, reporting, and recordkeeping.

(xi) An owner or operator who transfers a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream for treatment pursuant to § 63.132(g) shall include in the Notification of Compliance Status the name and location of the transferee and a description of the Group 1 wastewater stream or residual sent to the treatment facility.

(xii) An owner or operator complying with paragraph (h)(1) of this section shall notify the Administrator of the election to comply with paragraph (h)(1) of this section as part of the Notification of Compliance Status, or as part of the appropriate Periodic Report, as specified in paragraph (e)(6)(ix) of this section.

(6) *Periodic Reports.* For existing and new affected sources, the owner or operator shall submit Periodic Reports as specified in paragraphs (e)(6)(i) through (e)(6)(xii) of this section. In addition, for equipment leaks subject to § 63.502, the owner or operator shall submit the information specified in § 63.182(d) under the conditions listed in § 63.182(d), and for heat exchange systems subject to § 63.502(n), the owner or operator shall submit the information specified in § 63.104(f)(2) as part of the Periodic Report required by this paragraph (e)(6). Section § 63.505 shall govern the use of monitoring data to determine compliance for Group 1 emission points and for Group 1 and Group 2 emission points included in emissions averages with the following exception: as discussed in § 63.484(k), for storage vessels to which the provisions of § 63.505 do not apply, as specified in the monitoring plan required by § 63.120(d)(2), the owner or operator is required to comply with the requirements set out in the monitoring plan, and monitoring records may be used to determine compliance.

(i) Except as specified in paragraphs (e)(6)(xi) and (e)(6)(xii) of this section, a report containing the information in paragraph (e)(6)(ii) of this section or paragraphs (e)(6)(iii) through (e)(6)(x) of this section, as appropriate, shall be submitted semiannually no later than 60 days after the end of each 6-month period. The first report shall be submitted no later than 240 days after the date the Notification of Compliance Status is due and shall cover the 6-month period beginning on the date the Notification of Compliance Status is due.

(ii) If none of the compliance exceptions in paragraphs (e)(6)(iii) through (e)(6)(ix) of this section occurred during the 6-month period, the Periodic Report required by paragraph (e)(6)(i) of this section shall be a statement that there were no compliance exceptions as described in this paragraph for the 6-month period covered by that report and that none of the activities specified in paragraphs (e)(6)(iii) through (e)(6)(ix) of this section occurred during the 6-month period covered by that report.

(iii) * * *

(A) All information specified in § 63.122(a)(4) for storage vessels, §§ 63.117(a)(3) and 63.118(f) and 63.485(s)(5) for continuous front-end process vents, § 63.492 for batch front-end process vents and aggregate batch vent streams, § 63.499 for back-end process operations, § 63.104(b)(4) for heat exchange systems, and §§ 63.146(c) through 63.146(f) for process wastewater.

(B) The daily average values or batch cycle daily average values of monitored parameters for all excursions, as defined in § 63.505(g) and § 63.505(h). For excursions caused by lack of monitoring data, the start-time and duration of periods when monitoring data were not collected shall be specified.

(C) [Reserved.]

(D) The information in paragraphs (e)(6)(iii)(D)(*1*) through (e)(6)(iii)(D)(*5*) of this section, as applicable:

* * * * *

(*2*) Notification if a process change is made such that the group status of any emission point changes from Group 2 to Group 1. The owner or operator is not required to submit a notification of a process change if that process change caused the group status of an emission point to change from Group 1 to Group 2. However, until the owner or operator notifies the Administrator that the group status of an emission point has changed from Group 1 to Group 2, the owner or operator is required to continue to comply with the Group 1 requirements for that emission point. This notification may be submitted at any time.

(*3*) Notification if one or more emission points (other than equipment leaks) or one or more EPPU is added to an affected source. The owner or operator shall submit the information contained in paragraphs (e)(6)(iii)(D)(*3*)(*i*) through (e)(6)(iii)(D)(*3*)(*ii*) of this section.

(*i*) A description of the addition to the affected source; and

(*ii*) Notification of the group status of the additional emission point or all emission points in the EPPU.

(*4*) Notification if a standard operating procedure, as defined in § 63.500(a)(2), is changed and the change has the potential for increasing the concentration of carbon disulfide in the crumb dryer exhaust. This notification shall also include test results of the carbon disulfide concentration resulting from the new standard operating procedure.

(*5*) For process wastewater streams sent for treatment pursuant to § 63.132(g), reports of changes in the identity of the treatment facility or transferee.

* * * * *

(iv) For each batch front-end process vent with a batch mass input limitation, every second Periodic Report shall include the mass of HAP or material input to the batch unit operation during the 12-month period covered by the preceding and current Periodic Reports, and a statement of whether the batch front-end process vent was in or out of compliance with the batch mass input limitation.

(v) * * *

(B) For additional tests performed for the same kind of emission point using the same method, results and any other information, pertaining to the performance test, that is requested on a case-by-case basis by the Administrator shall be submitted, but a complete test report is not required.

(vi) Notification of a change in the primary product of an EPPU, in accordance with the provisions in § 63.480(f). This includes a change in primary product from one elastomer product to either another elastomer product or to a non-elastomer product.

(vii) The results for each change made to a predominant use determination made under § 63.480(g) for a storage vessel that is assigned to an affected source subject to this subpart after the change.

(viii) The results for each change made to a predominant use determination made under § 63.480(h) for recovery operations equipment assigned to an affected source subject to this subpart after the change.

(ix) An owner or operator complying with paragraph (h)(1) of this section shall notify the Administrator of the election to comply with paragraph (h)(1) of this section as part of the Periodic Report or as part of the Notification of Compliance Status as specified in paragraph (e)(5)(xi) of this section.

(x) An owner or operator electing not to retain daily average or batch cycle daily average values under paragraph (h)(2) of this section shall notify the Administrator as specified in paragraph (h)(2)(i) of this section.

(xi) The owner or operator of an affected source shall submit quarterly reports for all emission points included in an emissions average as specified in paragraphs (e)(6)(xi)(A) through (e)(6)(xi)(C) of this section.

(A) The quarterly reports shall be submitted no later than 60 days after the end of each quarter. The first report shall be submitted with the Notification of Compliance Status no later than 150 days after the compliance date.

(B) The quarterly reports shall include the information specified in paragraphs (e)(6)(xi)(B)(*1*) through (e)(6)(xi)(B)(*7*) of this section for all emission points included in an emissions average.

(*1*) The credits and debits calculated each month during the quarter;

(*2*) A demonstration that debits calculated for the quarter are not more than 1.30 times the credits calculated for the quarter, as required under § 63.503(e)(4);

(*3*) The values of any inputs to the debit and credit equations in § 63.503(g) and (h) that change from month to month during the quarter or that have changed since the previous quarter;

(*4*) 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 as described in paragraph (e)(6)(v) of this section;

(*5*) Reports of daily average values or batch cycle daily averages of monitored parameters for excursions as defined in § 63.505(g) or (h);

(*6*) For excursions caused by lack of monitoring data, the duration of periods when monitoring data were not collected shall be specified; and

(*7*) Any other information the affected source is required to report under the operating permit or Emissions Averaging Plan for the affected source.

(C) Every fourth quarterly report shall include the following:

(*1*) A demonstration that annual credits are greater than or equal to annual debits as required by § 63.503(e)(3); and

(*2*) A certification of compliance with all the emissions averaging provisions in § 63.503.

(xii) The owner or operator of an affected source shall submit quarterly reports for particular emission points and process sections not included in an emissions average as specified in paragraphs (e)(6)(xii)(A) through (e)(6)(xii)(D) of this section.

(A) The owner or operator of an affected source shall submit quarterly reports for a period of 1 year for an emission point or process section that is not included in an emissions average if:

(*1*) A control or recovery device for a particular emission point or process section has more excursions, as defined in § 63.505(g) or § 63.505(h), than the number of excused excursions allowed under § 63.505(i) for a semiannual reporting period; or

(*2*) The Administrator requests that the owner or operator submit quarterly reports for the emission point or process section.

(B) The quarterly reports shall include all information specified in paragraphs (e)(6)(iii) through (e)(6)(ix) of this section, as applicable to the emission point or process section for which quarterly reporting is required under paragraph (e)(6)(xii)(A) of this section. Information applicable to other emission points within the affected source shall be submitted in the semiannual reports required under paragraph (e)(6)(i) of this section.

(C) Quarterly reports shall be submitted no later than 60 days after the end of each quarter.

(D) After quarterly reports have been submitted for an emission point for 1 year without more excursions occurring (during that year) than the number of excused excursions allowed under § 63.505(i), the owner or operator may return to semiannual reporting for the emission point or process section.

(*7*) *Other reports.* Other reports shall be submitted as specified in paragraphs (e)(7)(i) through (e)(7)(v) of this section.

(i) For storage vessels, the notifications of inspections required by § 63.484 shall be submitted, as specified in § 63.122(h)(1) and (h)(2).

(ii) For owners or operators of affected sources required to request approval for a nominal control efficiency for use in calculating credits for an emissions average, the information specified in § 63.503(i) shall be submitted, as specified in paragraph (e)(7)(ii)(A) or (e)(7)(ii)(B) of this section, as appropriate.

(A) If use of a nominal control efficiency is part of the initial Emissions Averaging Plan described in paragraph (e)(4)(ii) of this section, the information in paragraph (e)(7)(iii) of this section shall be submitted with the Emissions Averaging Plan.

(B) If an owner or operator elects to use a nominal control efficiency after submittal of the initial Emissions Averaging Plan as described in paragraph (e)(4)(ii) of this section, the information required by paragraph (e)(7)(ii) of this section shall be submitted at the discretion of the owner or operator.

(iii) For back-end process operations using a control or recovery device to comply with §§ 63.493 through 63.500, the compliance redetermination report required by § 63.499(d) shall be submitted within 180 days after the process change.

(iv) When the conditions of § 63.480(f)(3)(i) or § 63.480(f)(4)(i) are met, reports of changes to the primary product for an EPPU or process unit, as required by § 63.480(f)(3)(ii) or § 63.480(f)(4)(ii), respectively, shall be submitted.

(v) Owners or operators of EPPU or emission points (other than equipment leak components subject to § 63.502) that are subject to § 63.480(i)(1) or (i)(2) shall submit a report as specified in paragraphs (e)(7)(v)(A) and (B) of this section.

(A) Reports shall include:

(*1*) A description of the process change or addition, as appropriate;

(*2*) The planned start-up date and the appropriate compliance date, according to § 63.480(i)(1) or (2);

(*3*) Identification of the group status of emission points (except equipment leak components subject to the requirements in § 63.502) specified in paragraphs

(e)(7)(v)(A)(*3*)(*i*) through (*iii*) of this section, as applicable.

(*i*) All the emission points in the added EPPU, as described in § 63.480(i)(1).

(*ii*) All the emission points in an affected source designated as a new affected source under § 63.480(i)(2)(i).

(*iii*) All the added or created emission points as described in § 63.480(i)(2)(ii).

(*4*) If the owner or operator wishes to request approval to use alternative monitoring parameters, alternative continuous monitoring or recordkeeping, alternative controls, engineering assessment to estimate emissions from a batch emissions episode, or wishes to establish parameter monitoring levels according to the procedures contained in § 63.505(c) or (d), a Precompliance Report shall be submitted in accordance with paragraph (e)(7)(v)(B) of this section.

(B) Reports shall be submitted as specified in paragraphs (e)(7)(v)(B)(*1*) through (e)(7)(v)(B)(*3*) of this section, as appropriate.

(*1*) Owners or operators of an added EPPU subject to § 63.480(i)(1) shall submit a report no later than 180 days prior to the compliance date for the EPPU.

(*2*) Owners or operators of an affected source designated as a new affected source under § 63.480(i)(2)(i) shall submit a report no later than 180 days prior to the compliance date for the affected source.

(*3*) Owners and operators of any emission point (other than equipment leak components subject to § 63.502) subject to § 63.480(i)(2)(ii) shall submit a report no later than 180 days prior to the compliance date for those emission points.

(8) *Operating Permit Application.* An owner or operator who submits an operating permit application instead of an Emissions Averaging Plan or a Precompliance Report shall include the following information with the operating permit application:

* * * * *

(f) *Alternative monitoring parameters.* The owner or operator of an affected source who has been directed by any section of this subpart, or any section of another subpart referenced by this subpart, that expressly references this paragraph (f) or § 63.151(f) to set unique monitoring parameters, or who requests approval to monitor a different parameter than those listed in § 63.484 for storage vessels, § 63.114 for continuous front-end process vents, § 63.489 for batch front-end process vents and aggregate batch vent streams, § 63.497 for back-end process operations, or § 63.143 for process wastewater shall submit the information specified in paragraphs (f)(1) through (f)(3) of this section in the Precompliance Report, as required by paragraph (e)(3) of this section. The owner or operator shall retain for a period of 5 years each record required by paragraphs (f)(1) through (f)(3) of this section.

* * * * *

(3) The required information shall include a description of the proposed monitoring, recordkeeping, and reporting system, to include the frequency and content of monitoring, recordkeeping, and reporting. Further, the rationale for the proposed monitoring, recordkeeping, and reporting system shall be included if either condition in paragraph (f)(3)(i) or (f)(3)(ii) of this section is met:

* * * * *

(g) *Alternative continuous monitoring and recordkeeping.* An owner or operator choosing not to implement the continuous parameter operating and recordkeeping provisions listed in § 63.485 for continuous front-end process vents, § 63.486 for batch front-end process vents and aggregate batch vent streams, § 63.493 for back-end process operations, and § 63.501 for process wastewater, may instead request approval to use alternative continuous monitoring and recordkeeping provisions according to the procedures specified in paragraphs (g)(1) through (g)(4) of this section. Requests shall be submitted in the Precompliance Report as specified in paragraph (e)(3)(iv) of this section, if not already included in the operating permit application, and shall contain the information specified in paragraphs (g)(2)(ii) and (g)(3)(ii) of this section, as applicable.

(1) The provisions in § 63.8(f)(5)(i) shall govern the review and approval of requests.

(2) * * *

(ii) * * *

(D) Demonstration to the Administrator's satisfaction that the proposed monitoring frequency is sufficient to represent control or recovery device operating conditions, considering typical variability of the specific process and control or recovery device operating parameter being monitored.

(3) An owner or operator may request approval to use an automated data compression recording system that does not record monitored operating parameter values at a set frequency, but that records all values that meet set criteria for variation from previously recorded values, in accordance with paragraphs (g)(3)(i) and (g)(3)(ii) of this section.

(i) * * *

(A) Measure the operating parameter value at least once during every 15 minute period;

* * * * *

(4) An owner or operator may request approval to use other alternative monitoring systems according to the procedures specified in § 63.8(f)(4).

(h) *Reduced recordkeeping program.* For any parameter with respect to any item of equipment, the owner or operator may implement the recordkeeping requirements in paragraph (h)(1) or (h)(2) of this section as alternatives to the continuous operating parameter monitoring and recordkeeping provisions that would otherwise apply under this subpart. The owner or operator shall retain for a period of 5 years each record required by paragraph (h)(1) or (h)(2) of this section, except as otherwise provided in paragraph (h)(1)(vi)(D) of this section.

(1) The owner or operator may retain only the daily average or the batch cycle daily average value, and is not required to retain more frequent monitored operating parameter values, for a monitored parameter with respect to an item of equipment, if the requirements of paragraphs (h)(1)(i) through (h)(1)(vi) of this section are met. An owner or operator electing to comply with the requirements of paragraph (h)(1) of this section shall notify the Administrator in the Notification of Compliance Status as specified in paragraph (e)(5)(xii) of this section, or, if the Notification of Compliance Status has already been submitted, in the Periodic Report immediately preceding implementation of the requirements of paragraph (h)(1) of this section, as specified in paragraph (e)(6)(ix) of this section.

* * * * *

(ii) * * *

(B) The running average is based on at least six one-hour average values; and

* * * * *

(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 (h)(1)(ii) of this section reaches a set point that is appropriately related to the established limit for the parameter that is being monitored.

* * * * *

(vi) The owner or operator shall retain the records identified in paragraphs (h)(1)(vi)(A) through (h)(1)(vi)(D) of this section.

* * * * *

(B) A description of the applicable monitoring system(s), and how compliance will be achieved with each requirement of paragraphs (h)(1)(i) through (h)(1)(v) of this section. The description shall identify the location and format (e.g., on-line storage, log entries) for each required record. If the description changes, the owner or operator shall retain both the current and the most recent superseded description. The description, and the most recent superseded description, shall be retained as provided in paragraph (a) of this section, except as provided in paragraph (h)(1)(vi)(D) of this section.

(C) A description, and the date, of any change to the monitoring system that would reasonably be expected to impair its ability to comply with the requirements of paragraph (h)(1) of this section.

(D) Owners and operators subject to paragraph (h)(1)(vi)(B) of this section shall retain the current description of the monitoring system as long as the description is current. 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) * * *

(i) If the owner or operator elects not to retain the daily average or batch cycle daily average values, the owner or operator shall notify the Administrator in the next Periodic Report as specified in paragraph (e)(6)(x) of this section. The notification shall identify the parameter and unit of equipment.

* * * * *

(iii) The owner or operator shall retain the records specified in paragraphs (h)(1)(i) through(h)(1)(iii) of this section, for the duration specified in paragraph (h) of this section. For any calendar week, if compliance with paragraphs (h)(1)(i) through (h)(1)(iii) 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) * * *

(A) The daily average or batch cycle daily average value during any start-up, shutdown, or malfunction shall not be considered an excursion for purposes of paragraph (h)(2) of this section, if the owner or operator follows the applicable provisions of the start-up, shutdown, and malfunction plan required by § 63.6(e)(3).

* * * * *

28. Revise Tables 1, 2, 5, 6, 7, and 8, and add Table 9 to Subpart U of part 63, to read as follows:

TABLE 1 TO SUBPART U OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART U AFFECTED SOURCES

Reference	Applies to subpart U	Comment
63.1(a)(1)	Yes	§ 63.482 specifies definitions in addition to or that supersede definitions in § 63.2.
63.1(a)(2)	Yes.	
63.1(a)(3)	Yes	§ 63.481(f) through (k) and § 63.160(b) identify those standards which may apply in addition to the requirements of subparts U and H of this part, and specify how compliance shall be achieved.
63.1(a)(4)	Yes	Subpart U (this table) specifies the applicability of each paragraph in subpart A to subpart U.
63.1(a)(5)	No	[Reserved.]
63.1(a)(6)–63.1(a)(8)	Yes.	
63.1(a)(9)	No	[Reserved.]
63.1(a)(10)	Yes.	
63.1(a)(11)	Yes.	
63.1(a)(12)–63.1(a)(14)	Yes.	
63.1(b)(1)	No	§ 63.480(a) contains specific applicability criteria.
63.1(b)(2)	Yes.	
63.1(b)(3)	No	§ 63.480(b) provides documentation requirements for EPPUs not considered affected sources.
63.1(c)(1)	Yes	Subpart U (this table) specifies the applicability of each paragraph in subpart A to subpart U.
63.1(c)(2)	No	Area sources are not subject to subpart U.
63.1(c)(3)	No	[Reserved.]
63.1(c)(4)	Yes.	
63.1(c)(5)	Yes	Except that affected sources are not required to submit notifications that are not required by this subpart U.
63.1(d)	No	[Reserved.]
63.1(e)	Yes.	
63.2	Yes	§ 63.482 specifies those subpart A definitions that apply to subpart U.
63.3	Yes.	
63.4(a)(1)–63.4(a)(3)	Yes.	
63.4(a)(4)	No	[Reserved.]
63.4(a)(5)	Yes.	
63.4(b)	Yes.	
63.4(c)	Yes.	
63.5(a)(1)	Yes	Except the terms ''source'' and ''stationary source'' should be interpreted as having the same meaning as ''affected source''.
63.5(a)(2)	Yes.	
63.5(b)(1)	Yes	Except § 63.480(i) defines when construction or reconstruction is subject to new source standards.
63.5(b)(2)	No	[Reserved.]

TABLE 1 TO SUBPART U OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART U AFFECTED SOURCES—Continued

Reference	Applies to subpart U	Comment
63.5(b)(3)	Yes.	
63.5(b)(4)	Yes	Except that the Initial Notification and § 63.9(b) requirements do not apply.
63.5(b)(5)	Yes.	
63.5(b)(6)	Yes	Except that § 63.480(i) defines when construction or reconstruction is subject to the new source standards.
63.5(c)	No	[Reserved.]
63.5(d)(1)(i)	Yes	Except that the references to the Initial Notification and § 63.9(b)(5) do not apply.
63.5(d)(1)(ii)	Yes	Except that § 63.5(d)(1)(ii)(H) does not apply.
63.5(d)(1)(iii)	No	§ 63.506(e)(5) and § 63.502(f) specify Notification of Compliance Status requirements.
63.5(d)(2)	No.	
63.5(d)(3)	Yes	Except § 63.5(d)(3)(ii) does not apply, and equipment leaks subject to § 63.502 are exempt.
63.5(d)(4)	Yes.	
63.5(e)	Yes.	
63.5(f)(1)	Yes.	
63.5(f)(2)	Yes	Except that where § 63.9(b)(2) is referred to, the owner or operator need not comply.
63.6(a)	Yes.	
63.6(b)(1)	Yes.	
63.6(b)(2)	Yes.	
63.6(b)(3)	Yes.	
63.6(b)(4)	Yes.	
63.6(b)(5)	Yes.	
63.6(b)(6)	No	[Reserved.]
63.6(b)(7)	No.	
63.6(c)(1)	Yes	§ 63.481 specifies the compliance date.
63.6(c)(2)	No.	
63.6(c)(3)	No	[Reserved.]
63.6(c)(4)	No	[Reserved.]
63.6(c)(5)	Yes.	
63.6(d)	No	[Reserved.]
63.6(e)	Yes	Except as otherwise specified for individual paragraphs (below), and § 63.6(e) does not apply to Group 2 emission points, unless they are included in an emissions average.[a]
63.6(e)(1)(i)	No	This is addressed by § 63.480(j)(4).
63.6(e)(1)(ii)	Yes.	
63.6(e)(1)(iii)	Yes.	
63.6(e)(2)	Yes.	
63.6(e)(3)(i)	Yes	For equipment leaks (subject to § 63.502), the start-up, shutdown, and malfunction plan requirement of § 63.6(e)(3)(i) is limited to control devices and is optional for other equipment. The start-up, shutdown, and malfunction plan may include written procedures that identify conditions that justify a delay of repair.
63.6(e)(3)(i)(A)	No	This is addressed by § 63.480(j)(4).
63.6(e)(3)(i)(B)	Yes.	
63.6(e)(3)(i)(C)	Yes.	
63.6(e)(3)(ii)	Yes.	
63.6(e)(3)(iii)	No	Recordkeeping and reporting are specified in § 63.506(b)(1).
63.6(e)(3)(iv)	No	Recordkeeping and reporting are specified in § 63.506(b)(1).
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 § 63.480(j)(4).
63.6(e)(3)(vii)(C)	Yes.	
63.6(e)(3)(viii)	Yes.	
63.6(f)(1)	Yes.	
63.6(f)(2)	Yes	Except 63.7(c), as referred to in § 63.6(f)(2)(iii)(D) does not apply, and except that § 63.6(f)(2)(ii) does not apply to equipment leaks subject to § 63.502.
63.6(f)(3)	Yes.	
63.6(g)	Yes.	
63.6(h)	No	Subpart U does not require opacity and visible emission standards.
63.6(i)(1)	Yes.	
63.6(i)(2)	Yes.	
63.6(i)(3)	Yes.	
63.6(i)(4)(i)(A)	Yes.	
63.6(i)(4)(i)(B)	No	Dates are specified in § 63.481(e) and § 63.506(e)(3)(i).
63.6(i)(4)(ii)	No.	
63.6(i)(5)–(14)	Yes.	
63.6(i)(15)	No	[Reserved.]

TABLE 1 TO SUBPART U OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART U AFFECTED SOURCES—Continued

Reference	Applies to subpart U	Comment
63.6(i)(16)	Yes.	
63.6(j)	Yes.	
63.7(a)(1)	Yes.	
63.7(a)(2)	No	§ 63.506(e)(5) specifies the submittal dates of performance test results for all emission points except equipment leaks; for equipment leaks, compliance demonstration results are reported in the Periodic Reports.
63.7(a)(3)	Yes.	
63.7(b)	No	§ 63.504(a)(4) specifies notification requirements.
63.7(c)	No	Except if the owner or operator chooses to submit an alternative nonopacity emission standard for approval under § 63.6(g).
63.7(d)	Yes.	
63.7(e)(1)	Yes	Except that all performance tests shall be conducted at maximum representative operating conditions achievable at the time without disruption of operations or damage to equipment.
63.7(e)(2)	Yes.	
63.7(e)(3)	No	Subpart U specifies requirements.
63.7(e)(4)	Yes.	
63.7(f)	Yes	Except that § 63.144(b)(5)(iii)(A) & (B) shall apply for process wastewater. Also, since a site specific test plan is not required, the notification deadline in § 63.7(f)(2)(i) shall be 60 days prior to the performance test, and in § 63.7(f)(3) approval or disapproval of the alternative test method shall not be tied to the site specific test plan.
63.7(g)	Yes	Except that the requirements in § 63.506(e)(5) apply instead of references to the Notification of Compliance Status report in 63.9(h). In addition, equipment leaks subject to § 63.502 are not required to conduct performance tests.
63.7(h)	Yes	Except § 63.7(h)(4)(ii) is not applicable, since the site-specific test plans in § 63.7(c)(2) are not required.
63.8(a)(1)	Yes.	
63.8(a)(2)	No.	
63.8(a)(3)	No	[Reserved.]
63.8(a)(4)	Yes.	
63.8(b)(1)	Yes.	
63.8(b)(2)	No	Subpart U specifies locations to conduct monitoring.
63.8(b)(3)	Yes.	
63.8(c)(1)	Yes.	
63.8(c)(1)(i)	Yes.	
63.8(c)(1)(ii)	No	For all emission points except equipment leaks, comply with § 63.506(b)(1)(i)(B); for equipment leaks, comply with § 63.181(g)(2)(iii).
63.8(c)(1)(iii)	Yes.	
63.8(c)(2)	Yes.	
63.8(c)(3)	Yes.	
63.8(c)(4)	No	§ 63.505 specifies monitoring frequency; not applicable to equipment leaks, because § 63.502 does not require continuous monitoring systems.
63.8(c)(5)–63.8(c)(8)	No.	
63.8(d)	No.	
63.8(e)	No.	
63.8(f)(1)–63.8(f)(3)	Yes.	
63.8(f)(4)(i)	No	Timeframe for submitting request is specified in § 63.506(f) or (g); not applicable to equipment leaks, because § 63.502 (through reference to subpart H) specifies acceptable alternative methods.
63.8(f)(4)(ii)	No	Contents of request are specified in § 63.506(f) or (g).
63.8(f)(4)(iii)	No.	
63.8(f)(5)(i)	Yes.	
63.8(f)(5)(ii)	No.	
63.8(f)(5)(iii)	Yes.	
63.8(f)(6)	No	Subpart U does not require CEM's.
63.8(g)	No	Data reduction procedures specified in § 63.506(d) and (h); not applicable to equipment leaks.
63.9(a)	Yes.	
63.9(b)	No	Subpart U does not require an initial notification.
63.9(c)	Yes.	
63.9(d)	Yes.	
63.9(e)	No	§ 63.504(a)(4) specifies notification deadline.
63.9(f)	No	Subpart U does not require opacity and visible emission standards.
63.9(g)	No.	
63.9(h)	No	§ 63.506(e)(5) specifies Notification of Compliance Status requirements.
63.9(i)	Yes.	
63.9(j)	No.	
63.10(a)	Yes.	
63.10(b)(1)	No	§ 63.506(a) specifies record retention requirements.

TABLE 1 TO SUBPART U OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART U AFFECTED SOURCES—Continued

Reference	Applies to subpart U	Comment
63.10(b)(2)	No	Subpart U specifies recordkeeping requirements.
63.10(b)(3)	No	§ 63.480(b) requires documentation of sources that are not affected sources.
63.10(c)	No	§ 63.506 specifies recordkeeping requirements.
63.10(d)(1)	Yes.	
63.10(d)(2)	No	§ 63.506(e)(5) specifies performance test reporting requirements; not applicable to equipment leaks.
63.10(d)(3)	No	Subpart U does not require opacity and visible emission standards.
63.10(d)(4)	Yes.	
63.10(d)(5)	Yes	Except that reports required by § 63.10(d)(5)(i) and/or § 63.10(d)(5)(ii) shall be submitted at the same time as Periodic Reports specified in § 63.506(e)(6). The start-up, shutdown, and malfunction plan, and any records or reports of start-up, shutdown, and malfunction do not apply to Group 2 emission points unless they are included in an emissions average.
63.10(e)	No	§ 63.506 specifies reporting requirements.
63.10(f)	Yes.	
63.11	Yes	Except that instead of § 63.11(b), § 63.504(c) shall apply.
63.12	Yes	Except that the authority of § 63.503(i) and the authority of § 63.177 (for equipment leaks) will not be delegated to States.
63.13–63.15	Yes.	

[a] The plan, and any records or reports of start-up, shutdown, and malfunction do not apply to Group 2 emission points unless they are included in an emissions average.

TABLE 2 TO SUBPART U OF PART 63.—APPLICABILITY OF SUBPARTS F, G, & H OF THIS PART TO SUBPART U AFFECTED SOURCES

Reference	Applies to subpart U	Comment	Applicable section of subpart U
Subpart F			
63.100	No.		
63.101	Yes	Several definitions from 63.101 are incorporated by reference into 63.482.	63.482.
63.102–63.103	No.		
63.104–63.105	Yes		63.501 and 63.502.
63.106–63.109	No.		
Subpart G			
63.110	No.		
63.111	Yes	Several definitions from 63.111 are incorporated by reference into 63.482.	63.482.
63.112	No.		
63.113–63.118	Yes	With the differences noted in 63.485(b) through 63.485(k)	63.485.
63.119–63.123	Yes	With the differences noted in 63.484(c) through 63.484(s)	63.484.
63.124–63.125	No	[Reserved.].	
63.126–63.130	No.		
63.131–63.147	Yes	With the differences noted in 63.501(a)(1) through 63.501(a)(19).	63.501.
63.148–63.149	Yes	With the differences noted in 63.484(c) through 63.484(s) and 63.501(a)(1) through 63.501(a)(23).	63.484 and 63.501.
63.150(a) through 63.150(f)	No.		
63.150(g)(1) and 63.150(g)(2)	No.		
63.150(g)(3)	Yes		63.503(g)(3).
63.150(g)(4)	No.		
63.150(g)(5)	Yes		63.503(g)(5).
63.150(h)(1) and 63.150(h)(2)	No.		
63.150(h)(3)	Yes		63.503(h)(3).
63.150(h)(4)	No.		
63.150(h)(5)	Yes		63.503(h)(5).
63.150(i) through 63.150(o)	No.		
63.151–63.152	No.		
Subpart H			
63.160–63.183	Yes	Subpart U affected sources shall comply with all requirements of subpart H of this part, with the differences noted in § 63.502.	63.502.

* * * * *

TABLE 5 TO SUBPART U OF PART 63.—KNOWN ORGANIC HAP EMITTED FROM THE PRODUCTION OF ELASTOMER PRODUCTS

Organic HAP/chemical name (CAS No.)	Elastomer product/subcategory											
	BR	EPI	EPR	HBR	HYP	NEO	NBL	NBR	PBR/ SBRS	PSR	SBL	SBRE
Acrylonitrile (107131)							✔	✔				
1,3 Butadiene (106990)							✔	✔	✔		✔	✔
Carbon Tetrachloride (56235)					✔							
Chlorobenzene (108907)					✔							
Chloroform (67663)					✔							
Chloroprene (126998)						✔						
Epichlorohydrin (106898)		✔										
Ethylbenzene (100414)	✔										✔	
Ethylene Dichloride (107062)										✔		
Ethylene Oxide (75218)		✔								✔		
Formaldehyde (50000)										✔		
Hexane (110543)	✔		✔						✔		✔	✔
Methanol (67561)	✔								✔			
Methyl Chloride (74873)	✔				✔							
Propylene Oxide (75569)		✔										
Styrene (100425)									✔		✔	✔
Toluene (108883)		✔	✔			✔			✔		✔	✔
Xylenes (1330207)	✔										✔	
Xylene (m-) (108383)	✔										✔	
Xylene (o-) (95476)	✔										✔	
Xylene (p-) (106423)	✔										✔	

CAS No. = Chemical Abstract Service Number.
BR = Butyl Rubber.
EPI = Epichlorohydrin Rubber.
EPR = Ethylene Propylene Rubber.
HBR = Halobutyl Rubber.
HYP = Hypalon™.
NEO = Neoprene.
NBL = Nitrile Butadiene Latex.
NBR = Nitrile Butadiene Rubber.
PBR/SBRS = Polybutadiene and Styrene Butadiene Rubber by Solution.
PSR = Polysulfide Rubber.
SBL = Styrene Butadiene Latex.
SBR = Styrene Butadiene Rubber by Emulsion or Solution.

TABLE 6 TO SUBPART U OF PART 63.—GROUP 1 BATCH FRONT-END PROCESS VENTS AND AGGREGATE BATCH VENT STREAMS—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS

Control/recovery device	Parameter to be monitored	Recordkeeping and reporting requirements for monitored parameters
Thermal Incinerator	Firebox temperature [a]	1. Continuous records as specified in § 63.491(e)(1).[b] 2. Record and report the average firebox temperature measured during the performance test—NCS.[c] 3. Record the batch cycle daily average firebox temperature as specified in § 63.491(e)(2). 4. Report all batch cycle daily average temperatures that are below the minimum operating value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]
Catalytic Incinerator	Temperature upstream and downstream of the catalyst bed. Temperature upstream and downstream of the catalyst bed.	1. Continuous records as specified in § 63.491(e)(1).[b] 2. Record and report the average upstream and downstream temperatures and the average temperature difference across the catalyst bed measured during the performance test—NCS.[c] 3. Record the batch cycle daily average upstream temperature and temperature difference across catalyst bed as specified in § 63.491(e)(2). 4. Report all batch cycle daily average upstream temperatures that are below the minimum upstream value established in the NCS or operating permit—PR.[d e] 5. Report all batch cycle daily average temperature differences across the catalyst bed that are below the minimum difference.

TABLE 6 TO SUBPART U OF PART 63.—GROUP 1 BATCH FRONT-END PROCESS VENTS AND AGGREGATE BATCH VENT STREAMS—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS—Continued

Control/recovery device	Parameter to be monitored	Recordkeeping and reporting requirements for monitored parameters
Boiler or Process Heater with a design heat input capacity less than 44 megawatts and where the batch front-end process vents or aggregate batch vent streams are not introduced with or used as the primary fuel.	Firebox temperature [a]	1. Continuous records as specified in § 63.491(e)(1).[b] 2. Record and report the average firebox temperature measured during the performance test—NCS.[c] 3. Record the batch cycle daily average firebox temperature as specified in § 63.491(e)(2).[d] 4. Report all batch cycle daily average temperatures that are below the minimum operating value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]
Flare	Presence of a flame at the pilot light.	1. Hourly records of whether the monitor was continuously operating during batch emission episodes selected for control and whether a flame was continuously present at the pilot light during each hour. 2. Record and report the presence of a flame at the pilot light over the full period of the compliance determination—NCS.[c] 3. Record the times and durations of all periods during batch emission episodes when all flames at the pilot light of a flare are absent or the monitor is not operating. 4. Report the times and durations of all periods during batch emission episodes selected for control when all flames at the pilot light of a flare are absent—PR.[d]
Scrubber for halogenated batch front-end process vents or aggregate batch vent streams. (Note: Controlled by a combustion device other than a flare).	pH of scrubber effluent, and	1. Continuous records as specified in § 63.491(e)(1).[b] 2. Record and report the average pH of the scrubber effluent measured during the performance test—NCS.[c] 3. Record the batch cycle daily average pH of the scrubber effluent as specified in § 63.491(e)(2). 4. Report all batch cycle daily average pH values of the scrubber effluent that are below the minimum operating value established in the NCS or operating permit and all instances when insufficient monitoring data are collected—PR.[d e]
Scrubber for halogenated batch front-end process vents or aggregate batch vent streams (Note: Controlled by a combustion device other than a flare) (Continued)	Scrubber liquid and gas flow rates [§ 63.489(b)(4)(ii)].	1. Records as specified in § 63.491(e)(1).[b] 2. Record and report the scrubber liquid/gas ratio averaged over the full period of the performance test—NCS.[c] 3. Record the batch cycle daily average scrubber liquid/gas ratio as specified in § 63.491(e)(2). 4. Report all batch cycle daily average scrubber liquid/gas ratios that are below the minimum value established in the NCS or operating permit and all instances when insufficient monitoring data are collected—PR.[d e]
Absorber [f]	Exit temperature of the absorbing liquid, and	1. Continuous records as specified in § 63.491(e)(1).[b] 2. Record and report the average exit temperature of the absorbing liquid measured during the performance test—NCS.[c] 3. Record the batch cycle daily average exit temperature of the absorbing liquid as specified in § 63.491(e)(2) for each batch cycle. 4. Report all the batch cycle daily average exit temperatures of the absorbing liquid that are below the minimum operating temperature established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]
	Exit specific gravity of the absorbing liquid	1. Continuous records as specified in § 63.491(e)(1).[b] 2. Record and report the average exit specific gravity measured during the performance test—NCS. 3. Record the batch cycle daily average exit specific gravity as specified in § 63.491(e)(2).

TABLE 6 TO SUBPART U OF PART 63.—GROUP 1 BATCH FRONT-END PROCESS VENTS AND AGGREGATE BATCH VENT STREAMS—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS—Continued

Control/recovery device	Parameter to be monitored	Recordkeeping and reporting requirements for monitored parameters
		4. Report all batch cycle daily average exit specific gravity values that are below the minimum operating value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]
Condenser[f]	Exit (product side) temperature	1. Continuous records as specified in § 63.491(e)(1).[b]
		2. Record and report the average exit temperature measured during the performance test—NCS.
		3. Record the batch cycle daily average exit temperature as specified in § 63.491(e)(2).
		4. Report all batch cycle daily average exit temperatures that are above the maximum operating value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]
Carbon Adsorber[f]	Total regeneration steam flow or nitrogen flow, or pressure (gauge or absolute) during carbon bed regeneration cycle(s), and.	1. Record of total regeneration steam flow or nitrogen flow, or pressure for each carbon bed regeneration cycle.
		2. Record and report the total regeneration steam flow or nitrogen flow, or pressure during each carbon bed regeneration cycle during the performance test—NCS[c].
		3. Report all carbon bed regeneration cycles when the total regeneration steam flow or nitrogen flow, or pressure is above the maximum value established in the NCS or operating permit—PR[d e].
	Temperature of the carbon bed after regeneration and within 15 minutes of completing any cooling cycle(s).	1. Record the temperature of the carbon bed after each regeneration and within 15 minutes of completing any cooling cycle(s).
		2. Record and report the temperature of the carbon bed after each regeneration and within 15 minutes of completing any cooling cycle(s) measured during the performance test—NCS[c].
		3. Report all carbon bed regeneration cycles when the temperature of the carbon bed after regeneration, or within 15 minutes of completing any cooling cycle(s), is above the maximum value established in the NCS or operating permit—PR[d e].
All Control Devices	Diversion to the atmosphere from the control device *or*.	1. Hourly records of whether the flow indicator was operating during batch emission episodes selected for control and whether a diversion was detected at any time during the hour, as specified in § 63.491(e)(3).
		2. Record and report the times of all periods during batch emission episodes selected for control when emissions are diverted through a bypass line, or the flow indicator is not operating—PR[d].
	Monthly inspections of sealed valves.	1. Records that monthly inspections were performed as specified in § 63.491(e)(4)(i).
		2. Record and report all monthly inspections that show that valves are in the diverting position or that a seal has been broken—PR[d].
Absorber, Condenser, and Carbon Adsorber (as an alternative to the above).	Concentration level or reading indicated by an organic monitoring device at the outlet of the recovery device.	1. Continuous records as specified in § 63.491(e)(1).[b]
		2. Record and report the average batch vent concentration level or reading measured during the performance test—NCS.
		3. Record the batch cycle daily average concentration level or reading as specified in § 63.491(e)(2).
		4. Report all batch cycle daily average concentration levels or readings that are above the maximum values established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e a]

[a] Monitor may be installed in the firebox or in the duct work immediately downstream of the firebox before any substantial heat exchange is encountered.

[b] "Continuous records" is defined in § 63.111.

[c] NCS = Notification of Compliance Status described in § 63.506(e)(5).

[d] PR = Periodic Reports described in § 63.506(e)(6) of this subpart.

[e] The periodic reports shall include the duration of periods when monitoring data are not collected as specified in § 63.506(e)(6)(iii)(C) of this subpart.

[f] Alternatively, these devices may comply with the organic monitoring device provisions listed at the end of this table.

TABLE 7 TO SUBPART U OF PART 63.—OPERATING PARAMETERS FOR WHICH MONITORING LEVELS ARE REQUIRED TO BE ESTABLISHED FOR CONTINUOUS AND BATCH FRONT-END PROCESS VENTS AND AGGREGATE BATCH VENT STREAMS

Control/recovery device	Parameters to be monitored	Established operating parameter(s)
Thermal incinerator	Firebox temperature	Minimum temperature.
Catalytic incinerator	Temperature upstream and downstream of the catalyst bed	Minimum upstream temperature; and minimum temperature difference across the catalyst bed.
Boiler or process heater	Firebox temperature	Minimum temperature.
Scrubber for halogenated vents	pH of scrubber effluent; and scrubber liquid and gas flow rates [§ 63.489(b)(4)(ii)].	Minimum pH; and minimum liquid/gas ratio.
Absorber	Exit temperature of the absorbing liquid; and exit specific gravity of the absorbing liquid.	Maximum temperature; and maximum specific gravity.
Condenser	Exit temperature	Maximum temperature.
Carbon adsorber	Total regeneration steam flow or nitrogen flow, or pressure (gauge or absolute) [a] during carbon bed regeneration cycle; and temperature of the carbon bed after regeneration (and within 15 minutes of completing any cooling cycle(s)).	Maximum flow or pressure; and maximum temperature.
Other devices (or as an alternate to the above) [b].	HAP concentration level or reading at outlet of device	Maximum HAP concentration or reading.

[a] 25 to 50 mm (absolute) is a common pressure level obtained by pressure swing absorbers.
[b] Concentration is measured instead of an operating parameter.

TABLE 8 TO SUBPART U OF PART 63.—SUMMARY OF COMPLIANCE ALTERNATIVE REQUIREMENTS FOR THE BACK-END PROCESS PROVISIONS

Compliance alternative	Parameter to be monitored	Requirements
Compliance Using Stripping Technology, Demonstrated through Periodic Sampling [§ 63.495(b)].	Residual organic HAP content in each sample of crumb or latex.	(1) If a stripper operated in batch mode is used, at least one representative sample is to be taken from every batch. (2) If a stripper operated in continuous mode is used, at least one representative sample is to be taken each operating day.
	Quantity of Material (weight of latex or dry crumb rubber) represented by each sample.	(1) Acceptable methods of determining this quantity are production records, measurement of stream characteristics, and engineering calculations.
Compliance Using Stripping Technology, Demonstrated through Stripper Parameter Monitoring [§ 63.495(c)].	At a minimum, temperature, pressure, steaming rates (for steam strippers), and some parameter that is indicative of residence time.	(1) Establish stripper operating parameter levels for each grade in accordance with § 63.505(e). (2) Continuously monitor stripper operating parameters. (3) If hourly average parameters are outside of the established operating parameter levels, a crumb or latex sample shall be taken in accordance with § 63.495(c)(3)(ii).
Determining Compliance Using Control or Recovery Devices [§ 63.496].	Parameters to be monitored are described in Table 3 of subpart G of this part.	Comply with requirements listed in Table 3 of subpart G of this part, except for the requirements for halogenated vent stream scrubbers.

TABLE 9 TO SUBPART U OF PART 63.—ROUTINE REPORTS REQUIRED BY THIS SUBPART

Reference	Description of report	Due date
§ 63.506(b) and Subpart A	Refer to § 63.506(b), Table 1 of this subpart, and to subpart A.	Refer to subpart A.
§ 63.506(e)(3)	Precompliance Report [a]	Existing affected sources: 12 months prior to compliance date. New affected sources: with the application for approval of construction or reconstruction.
§ 63.506(e)(4)	Emissions Averaging Plan	18 months prior to the compliance date.
§ 63.506(e)(4)(iv)	Updates to Emissions Averaging Plan	120 days prior to making the change necessitating the update.
§ 63.506(e)(5)	Notification of Compliance Status [b]	Within 150 days after the compliance date.
§ 63.506(e)(6)	Periodic Reports	Semiannually, no later than 60 days after the end of each 6-month period. See § 63.506(e)(6)(i) for the due date for this report.
§ 63.506(e)(6)(xi)	Quarterly reports for Emissions Averaging	No later than 60 days after the end of each quarter. First report is due with the Notification of Compliance Status.
§ 63.506(e)(6)(xii)	Quarterly reports upon request of the Administrator	No later than 60 days after the end of each quarter.

TABLE 9 TO SUBPART U OF PART 63.—ROUTINE REPORTS REQUIRED BY THIS SUBPART—Continued

Reference	Description of report	Due date
§ 63.506(e)(7)(i)	Storage Vessels Notification of Inspection	At least 30 days prior to the refilling of each storage vessel or the inspection of each storage vessel.
§ 63.506(e)(7)(ii)	Requests for Approval of a Nominal Control Efficiency for Use in Emissions Averaging.	Initial submittal is due with the Emissions Averaging Plan; later submittals are made at the discretion of the owner or operator as specified in § 63.506(e)(7)(ii)(B).
§ 63.506(e)(7)(iii)	Notification of Change in the Primary Product	For notification under § 63.480(f)(3)(ii)—notification submittal date at the discretion of the owner or operator.[c] For notification under § 63.480(f)(4)(ii)—within 6 months of making the determination.

[a] There may be two versions of this report due at different times; one for equipment subject to § 63.502 and one for other emission points subject to this subpart.
[b] There will be two versions of this report due at different times; one for equipment subject to § 63.502 and one for other emission points subject to this subpart.
[c] Note that the EPPU remains subject to this subpart until the notification under § 63.480(f)(3)(i) is made.

Subpart JJJ—National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins

29. Section 63.1310 is amended by:

a. Revising paragraphs (a), (b), (c), (e), (f), (g) introductory text, (g)(1) through (g)(4), (g)(6), (g)(7), (g)(8), (h), (i) introductory text, (i)(1) introductory text, (i)(1)(i), (i)(1)(ii), (i)(2)(i) introductory text, (i)(2)(i)(A), (i)(2)(ii), (i)(3), (i)(4), (i)(5), and (j);

b. Removing paragraph (i)(2)(iii); and

c. Adding paragraph (i)(6), to read as follows:

§ 63.1310 Applicability and designation of affected sources.

(a) *Definition of affected source.* The provisions of this subpart apply to each affected source. Affected sources are described in paragraphs (a)(1) through (a)(4) of this section.

(1) An affected source is either an existing affected source or a new affected source. Existing affected source is defined in paragraph (a)(2) of this section, and new affected source is defined in paragraph (a)(3) of this section.

(2) An existing affected source is defined as each group of one or more thermoplastic product process units (TPPU) and associated equipment, as listed in paragraph (a)(4) of this section that is not part of a new affected source, as defined in paragraph (a)(3) of this section, that is manufacturing the same primary product, and that is located at a plant site that is a major source.

(3) A new affected source is defined as something that meets the criteria of paragraph (a)(3)(i), (a)(3)(ii), or (a)(3)(iii) of this section. The situation described in paragraph (a)(3)(i) of this section is distinct from those situations described in paragraphs (a)(3)(ii) and (a)(3)(iii) of this section and from any situation described in paragraph (i) of this section.

(i) At a site without HAP emission points before March 29, 1995 (i.e., a ''greenfield'' site), each group of one or more TPPU and associated equipment, as listed in paragraph (a)(4) of this section, that is manufacturing the same primary product and that is part of a major source on which construction commenced after March 29, 1995;

(ii) A group of one or more TPPU meeting the criteria in paragraph (i)(1)(i) of this section; or

(iii) A reconstructed affected source meeting the criteria in paragraph (i)(2)(i) of this section.

(4) *Emission points and equipment.* The affected source also includes the emission points and equipment specified in paragraphs (a)(4)(i) through (a)(4)(vi) of this section that are associated with each applicable group of one or more TPPU constituting an affected source.

(i) Each waste management unit.

(ii) Maintenance wastewater.

(iii) Each heat exchange system.

(iv) Each process contact cooling tower used in the manufacture of PET that is associated with a new affected source.

(v) Each process contact cooling tower used in the manufacture of PET using a continuous terephthalic acid high viscosity multiple end finisher process that is associated with an existing affected source.

(vi) Equipment required by, or utilized as a method of compliance with, this subpart which may include control devices and recovery devices.

(5) TPPUs and associated equipment, as listed in paragraph (a)(4) of this section, that are located at plant sites that are not major sources are neither affected sources nor part of an affected source.

(b) *TPPUs without organic HAP.* The owner or operator of a TPPU that is part of an affected source, as defined in paragraph (a) of this section, but that does not use or manufacture any organic HAP shall comply with the requirements of either paragraph (b)(1) or (b)(2) of this section. Such a TPPU is not subject to any other provisions of this subpart and is not required to comply with the provisions of subpart A of this part.

(1) Retain information, data, and analyses used to document the basis for the determination that the TPPU does not use or manufacture any organic HAP. Types of information that could document this determination include, but are not limited to, records of chemicals purchased for the process, analyses of process stream composition, engineering calculations, or process knowledge.

(2) When requested by the Administrator, demonstrate that the TPPU does not use or manufacture any organic HAP.

(c) *Emission points not subject to the provisions of this subpart.* The affected source includes the emission points listed in paragraphs (c)(1) through (c)(9) of this section, but these emission points are not subject to the requirements of this subpart or to the provisions of subpart A of this part.

(1) Equipment that does not contain organic HAP and is located within a TPPU that is part of an affected source;

(2) Stormwater from segregated sewers;

(3) Water from fire-fighting and deluge systems in segregated sewers;

(4) Spills;

(5) Water from safety showers;

(6) Water from testing of deluge systems;

(7) Water from testing of firefighting systems;

(8) Vessels and equipment storing and/or handling material that contain no organic HAP and/or organic HAP as impurities only; and

(9) Equipment that is intended to operate in organic HAP service for less than 300 hours during the calendar year.

* * * * *

(e) *Applicability determination of nonthermoplastic equipment included within the boundaries of a TPPU.* If a polymer that is not subject to this subpart is produced within the equipment (i.e., collocated) making up a TPPU and at least 50 percent of said polymer is used in the production of a thermoplastic product manufactured by said TPPU, the unit operations involved in the production of said polymer are considered part of the TPPU and are subject to this subpart except as specified in this paragraph (e). Any emission points that are subject to another subpart of this part and that are from said unit operations shall remain subject to that other subpart of this part and are not subject to this subpart. All emission points from those unit operations that are not subject to another subpart of this part shall be subject to this subpart.

(f) *Primary product determination and applicability.* An owner or operator of a process unit that produces or plans to produce a thermoplastic product shall determine if the process unit is subject to this subpart in accordance with this paragraph. The owner or operator shall initially determine whether a process unit is designated as a TPPU and subject to the provisions of this subpart in accordance with either paragraph (f)(1) or (f)(2) of this section. The owner or operator of a flexible operation unit that was not initially designated as a TPPU, but in which a thermoplastic product is produced, shall conduct an annual re-determination of the applicability of this subpart in accordance with paragraph (f)(3) of this section. Owners or operators that anticipate the production of a thermoplastic product in a process unit that was not initially designated as a TPPU, and in which no thermoplastic products are currently produced, shall determine if the process unit is subject to this subpart in accordance with paragraph (f)(4) of this section. Paragraphs (f)(3) and (f)(5) through (f)(7) of this section discuss compliance only for flexible operation units. Other paragraphs apply to all process units, including flexible operation units, unless otherwise noted. Paragraph (f)(8) of this section contains reporting requirements associated with the applicability determinations. Paragraphs (f)(9) and (f)(10) of this section describe criteria for removing the TPPU designation from a process unit.

(1) *Initial Determination.* The owner or operator shall initially determine if a process unit is subject to the provisions of this subpart based on the primary product of the process unit in accordance with paragraphs (f)(1)(i) through (iii) of this section. If the process unit never uses or manufactures any organic HAP, regardless of the outcome of the primary product determination, the only requirements of this subpart that might apply to the process unit are contained in paragraph (b) of this section. If a flexible operation unit does not use or manufacture any organic HAP during the manufacture of one or more products, paragraph (f)(5)(i) of this section applies to that flexible operation unit.

(i) If a process unit only manufactures one product, then that product shall represent the primary product of the process unit.

(ii) If a process unit produces more than one intended product at the same time, the primary product shall be determined in accordance with paragraph (f)(1)(ii)(A) or (B) of this section.

(A) The product for which the process unit has the greatest annual design capacity on a mass basis shall represent the primary product of the process unit, or

(B) If a process unit has the same maximum annual design capacity on a mass basis for two or more products, and if one of those products is a thermoplastic product, then the thermoplastic product shall represent the primary product of the process unit.

(iii) If a process unit is designed and operated as a flexible operation unit, the primary product shall be determined as specified in paragraphs (f)(1)(iii)(A) or (B) of this section based on the anticipated operations for the 5 years following September 12, 1996 at existing process units, or for the first year after the process unit begins production of any product for new process units. If operations cannot be anticipated sufficiently to allow the determination of the primary product for the specified period, applicability shall be determined in accordance with paragraph (f)(2) of this section.

(A) If the flexible operation unit will manufacture one product for the greatest operating time over the specified five year period for existing process units, or the specified one year period for new process units, then that product shall represent the primary product of the flexible operation unit.

(B) If the flexible operation unit will manufacture multiple products equally based on operating time, then the product with the greatest expected production on a mass basis over the specified five year period for existing process units, or the specified one year period for new process units shall represent the primary product of the flexible operation unit.

(iv) If, according to paragraph (f)(1)(i), (ii), or (iii) of this section, the primary product of a process unit is a thermoplastic product, then that process unit shall be designated as a TPPU. That TPPU and associated equipment, as listed in paragraph (a)(4) of this section is either an affected source or part of an affected source comprised of other TPPU and associated equipment, as listed in paragraph (a)(4) of this section, subject to this subpart with the same primary product at the same plant site that is a major source. If the primary product of a process unit is determined to be a product that is not a thermoplastic product, then that process unit is not a TPPU.

(2) If the primary product cannot be determined for a flexible operation unit in accordance with paragraph (f)(1)(iii) of this section, applicability shall be determined in accordance with this paragraph.

(i) If the owner or operator cannot determine the primary product in accordance with paragraph (f)(1)(iii) of this section, but can determine that a thermoplastic product is not the primary product, then that flexible operation unit is not a TPPU.

(ii) If the owner or operator cannot determine the primary product in accordance with paragraph (f)(1)(iii) of this section, and cannot determine that a thermoplastic product is not the primary product as specified in paragraph (f)(2)(i) of this section, applicability shall be determined in accordance with paragraph (f)(2)(ii)(A) or (f)(2)(ii)(B) of this section.

(A) If the flexible operation unit is an existing process unit, the flexible operation unit shall be designated as a TPPU if a thermoplastic product was produced for 5 percent or greater of the total operating time of the flexible operating unit since March 9, 1999. That TPPU and associated equipment, as listed in paragraph (a)(4) of this section, is either an affected source, or part of an affected source comprised of other TPPU and associated equipment, as listed in paragraph (a)(4) of this section, subject to this subpart with the same primary product at the same plant site that is a major source. For a flexible operation unit that is designated as an TPPU in accordance with this

paragraph, the thermoplastic product produced for the greatest amount of time since March 9, 1999 shall be designated as the primary product of the TPPU.

(B) If the flexible operation unit is a new process unit, the flexible operation unit shall be designated as a TPPU if the owner or operator anticipates that a thermoplastic product will be manufactured in the flexible operation unit at any time in the first year after the date the unit begins production of any product. That TPPU and associated equipment, as listed in paragraph (a)(4) of this section, is either an affected source, or part of an affected source comprised of other TPPU and associated equipment, as listed in paragraph (a)(4) of this section, subject to this subpart with the same primary product at the same plant site that is a major source. For a process unit that is designated as a TPPU in accordance with this paragraph, the thermoplastic product that will be produced shall be designated as the primary product of the TPPU. If more than one thermoplastic product will be produced, the owner or operator may select which thermoplastic product is designated as the primary product.

(3) *Annual applicability determination for non-TPPUs that have produced a thermoplastic product.* Once per year beginning September 12, 2001, the owner or operator of each flexible operation unit that is not designated as a TPPU, but that has produced a thermoplastic product at any time in the preceding five-year period or since the date that the unit began production of any product, whichever is shorter, shall perform the evaluation described in paragraphs (f)(3)(i) through (f)(3)(iii) of this section.

(i) For each product produced in the flexible operation unit, the owner or operator shall calculate the percentage of total operating time over which the product was produced during the preceding five-year period.

(ii) The owner or operator shall identify the primary product as the product with the highest percentage of total operating time for the preceding five-year period.

(iii) If the primary product identified in paragraph (f)(3)(ii) is a thermoplastic product, the flexible operation unit shall be designated as a TPPU. The owner or operator shall notify the Administrator no later than 45 days after determining that the flexible operation unit is a TPPU, and shall comply with the requirements of this subpart in accordance with paragraph (i)(1) of this section for the flexible operation unit.

(4) *Applicability determination for non-TPPUs that have not produced a thermoplastic product.* The owner or operator that anticipates the production of a thermoplastic product in a process unit that is not designated as a TPPU, and in which no thermoplastic products have been produced in the previous 5 year period or since the date that the process unit began production of any product, whichever is shorter, shall determine if the process unit is subject to this subpart in accordance with paragraphs (f)(4)(i) and (ii) of this section. Also, owners or operators who have notified the Administrator that a process unit is not a TPPU in accordance with paragraph (f)(9) of this section, that now anticipate the production of a thermoplastic product in the process unit, shall determine if the process unit is subject to this subpart in accordance with paragraphs (f)(4)(i) and (ii) of this section.

(i) The owner or operator shall use the procedures in paragraph (f)(1) or (f)(2) of this section to determine if the process unit is designated as a TPPU, with the following exception: for existing process units that are determining the primary product in accordance with paragraph (f)(1)(iii) of this section, or that are determining applicability in accordance with paragraph (f)(2) of this section, production shall be projected for the five years following the date that the owner or operator anticipates initiating the production of a thermoplastic product, instead of the five years following September 12, 1996.

(ii) If the unit is designated as a TPPU in accordance with paragraph (f)(4)(i) of this section, the owner or operator shall comply in accordance with paragraph (i)(1) of this section.

(5) *Compliance for flexible operation units.* Owners or operators of TPPUs that are flexible operation units shall comply with the standards specified for the primary product, with the exceptions provided in paragraphs (f)(5)(i) and (f)(5)(ii) of this section.

(i) Whenever a flexible operation unit manufactures a product in which no organic HAP is used or manufactured, the owner or operator is only required to comply with either paragraph (b)(1) or (b)(2) of this section to demonstrate compliance for activities associated with the manufacture of that product. This subpart does not require compliance with the provisions of subpart A of this part for activities associated with the manufacture of a product that meets the criteria of paragraph (b) of this section.

(ii) Whenever a flexible operation unit manufactures a product that makes it subject to subpart GGG of this part, the owner or operator is not required to comply with the provisions of this subpart during the production of that product.

(6) Owners or operators of TPPUs that are flexible operation units have the option of determining the group status of each emission point associated with the flexible operation unit, in accordance with either paragraph (f)(6)(i) or (f)(6)(ii) of this section, with the exception of batch process vents. For batch process vents, the owner or operator shall determine the group status in accordance with § 63.1323.

(i) The owner or operator may determine the group status of each emission point based on emission point characteristics when the primary product is being manufactured. The criteria that shall be used for this group determination are the Group 1 criteria specified for the primary product.

(ii) The owner or operator may determine the group status of each emission point separately for each product produced by the flexible operation unit. For each product, the group status shall be determined using the emission point characteristics when that product is being manufactured and using the Group 1 criteria specified for the primary product. (Note: Under this scenario, it is possible that the group status, and therefore the requirement to achieve emission reductions, for an emission point may change depending on the product being manufactured.)

(7) Owners or operators determining the group status of emission points in flexible operation units based solely on the primary product in accordance with paragraph (f)(6)(i) of this section shall establish parameter monitoring levels, as required, in accordance with either paragraph (f)(7)(i) or (f)(7)(ii) of this section. Owners or operators determining the group status of emission points in flexible operation units based on each product in accordance with paragraph (f)(6)(ii) of this section shall establish parameter monitoring levels, as required, in accordance with paragraph (f)(7)(i) of this section.

(i) Establish separate parameter monitoring levels in accordance with § 63.1334(a) for each individual product.

(ii) Establish a single parameter monitoring level (for each parameter required to be monitored at each device subject to monitoring requirements) in accordance with § 63.1334(a) that would apply for all products.

(8) *Reporting requirements.* When it is determined that a process unit is a TPPU and subject to the requirements of this subpart, the Notification of

Compliance Status required by § 63.1335(e)(5) shall include the information specified in paragraphs (f)(8)(i) and (f)(8)(ii) of this section, as applicable. If it is determined that the process unit is not subject to this subpart, the owner or operator shall either retain all information, data, and analysis used to document the basis for the determination that the primary product is not a thermoplastic product, or, when requested by the Administrator, demonstrate that the process unit is not subject to this subpart.

(i) If the TPPU manufactures only one thermoplastic product, identification of that thermoplastic product.

(ii) If the TPPU is designed and operated as a flexible operation unit, the information specified in paragraphs (f)(8)(ii)(A) through (f)(8)(ii)(D) of this section, as appropriate, shall be submitted.

(A) If a primary product could be determined, identification of the primary product.

(B) Identification of which compliance option, either paragraph (f)(6)(i) or (f)(6)(ii) of this section, has been selected by the owner or operator.

(C) If the option to establish separate parameter monitoring levels for each product in paragraph (f)(7)(i) of this section is selected, the identification of each product and the corresponding parameter monitoring level.

(D) If the option to establish a single parameter monitor level in paragraph (f)(7)(ii) of this section is selected, the parameter monitoring level for each parameter.

(9) *TPPUs terminating production of all thermoplastic products.* If a TPPU terminates the production of all thermoplastic products and does not anticipate the production of any thermoplastic products in the future, the process unit is no longer a TPPU and is not subject to this subpart after notification is made to the Administrator. This notification shall be accompanied by a rationale for why it is anticipated that no thermoplastic products will be produced in the process unit in the future.

(10) *Redetermination of applicability to TPPUs that are flexible operation units.* Whenever changes in production occur that could reasonably be expected to change the primary product of a TPPU that is operating as a flexible operation unit from a thermoplastic product to a product that would make the process unit subject to another subpart of this part, the owner or operator shall re-evaluate the status of the process unit as a TPPU in accordance with paragraphs (f)(10)(i) through (iii) of this section.

(i) For each product produced in the flexible operation unit, the owner or operator shall calculate the percentage of total operating time in which the product was produced for the preceding five-year period, or since the date that the process unit began production of any product, whichever is shorter.

(ii) The owner or operator shall identify the primary product as the product with the highest percentage of total operating time for the period.

(iii) If the conditions in (f)(10)(iii)(A) through (C) of this section are met, the flexible operation unit shall no longer be designated as a TPPU and shall no longer be subject to the provisions of this subpart after the date that the process unit is required to be in compliance with the provisions of the other subpart of this part to which it is subject. If the conditions in paragraphs (f)(10)(iii)(A) through (C) of this section are not met, the flexible operation unit shall continue to be considered a TPPU and subject to the requirements of this subpart.

(A) The product identified in (f)(10)(ii) of this section is not a thermoplastic product; and

(B) The production of the product identified in (f)(10)(ii) of this section is subject to another subpart of this part; and

(C) The owner or operator submits a notification to the Administrator of the pending change in applicability.

(g) *Storage vessel ownership determination.* The owner or operator shall follow the procedures specified in paragraphs (g)(1) through (g)(7) of this section to determine to which process unit a storage vessel shall be assigned. Paragraph (g)(8) of this section specifies when an owner or operator is required to redetermine to which process unit a storage vessel is assigned.

(1) If a storage vessel is already subject to another subpart of 40 CFR part 63 on September 12, 1996, said storage vessel shall be assigned to the process unit subject to the other subpart.

(2) If a storage vessel is dedicated to a single process unit, the storage vessel shall be assigned to that process unit.

(3) If a storage vessel is shared among process units, then the storage vessel shall be assigned to that process unit located on the same plant site as the storage vessel that has the greatest input into or output from the storage vessel (i.e., said process unit has the predominant use of the storage vessel).

(4) If predominant use cannot be determined for a storage vessel that is shared among process units and if only one of those process units is a TPPU subject to this subpart, the storage vessel shall be assigned to said TPPU.

* * * * *

(6) If the predominant use of a storage vessel varies from year to year, then predominant use shall be determined based on the utilization that occurred during the year preceding September 12, 1996 or based on the expected utilization for the 5 years following September 12, 1996 for existing affected sources, whichever is more representative of the expected operations for said storage vessel, and based on the expected utilization for the first 5 years after initial start-up for new affected sources. The determination of predominant use shall be reported in the Notification of Compliance Status, as required by § 63.1335(e)(5)(vi).

(7) Where a storage vessel is located at a major source that includes one or more process units which place material into, or receive materials from the storage vessel, but the storage vessel is located in a tank farm (including a marine tank farm), the applicability of this subpart shall be determined according to the provisions in paragraphs (g)(7)(i) through (g)(7)(iv) of this section.

(i) The storage vessel may only be assigned to a process unit that utilizes the storage vessel and does not have an intervening storage vessel for that product (or raw material, as appropriate). With respect to any process unit, an intervening storage vessel means a storage vessel connected by hard-piping both to the process unit and to the storage vessel in the tank farm so that product or raw material entering or leaving the process unit flows into (or from) the intervening storage vessel and does not flow directly into (or from) the storage vessel in the tank farm.

(ii) If there is no process unit at the major source that meets the criteria of paragraph (g)(7)(i) of this section with respect to a storage vessel, this subpart does not apply to the storage vessel.

(iii) If there is only one process unit at the major source that meets the criteria of paragraph (g)(7)(i) of this section with respect to a storage vessel, the storage vessel shall be assigned to that process unit.

(iv) If there are two or more process units at the major source that meet the criteria of paragraph (g)(7)(i) of this section with respect to a storage vessel, the storage vessel shall be assigned to one of those process units according to the provisions of paragraphs (g)(3) through (g)(6) of this section. The predominant use shall be determined among only those process units that

meet the criteria of paragraph (g)(7)(i) of this section.

(8) If the storage vessel begins receiving material from (or sending material to) a process unit that was not included in the initial determination, or ceases to receive material from (or send material to) a process unit, the owner or operator shall re-evaluate the applicability of this subpart to the storage vessel.

(h) *Recovery operations equipment ownership determination.* The owner or operator shall follow the procedures specified in paragraphs (h)(1) through (h)(6) of this section to determine to which process unit recovery operations equipment shall be assigned. Paragraph (h)(7) of this section specifies when an owner or operator is required to redetermine to which process unit the recovery operations equipment is assigned.

(1) If recovery operations equipment is already subject to another subpart of 40 CFR part 63 on September 12, 1996, said recovery operations equipment shall be assigned to the process unit subject to the other subpart.

(2) If recovery operations equipment is dedicated to a single process unit, the recovery operations equipment shall be assigned to that process unit.

(3) If recovery operations equipment is shared among process units, then the recovery operations equipment shall be assigned to that process unit located on the same plant site as the recovery operations equipment that has the greatest input into or output from the recovery operations equipment (i.e., said process unit has the predominant use of the recovery operations equipment).

(4) If predominant use cannot be determined for recovery operations equipment that is shared among process units and if one of those process units is a TPPU subject to this subpart, the recovery operations equipment shall be assigned to said TPPU.

(5) If predominant use cannot be determined for recovery operations equipment that is shared among process units and if more than one of the process units are TPPUs that have different primary products and that are subject to this subpart, then the owner or operator shall assign the recovery operations equipment to any one of said TPPUs.

(6) If the predominant use of recovery operations equipment varies from year to year, then predominant use shall be determined based on the utilization that occurred during the year preceding September 12, 1996 or based on the expected utilization for the 5 years following September 12, 1996 for existing affected sources, whichever is the more representative of the expected operations for said recovery operations equipment, and based on the first 5 years after initial start-up for new affected sources. The determination of predominant use shall be reported in the Notification of Compliance Status, as required by § 63.1335(e)(5)(vii).

(7) If a piece of recovery operations equipment begins receiving material from a process unit that was not included in the initial determination, or ceases to receive material from a process unit that was included in the initial determination, the owner or operator shall reevaluate the applicability of this subpart to that recovery operations equipment.

(i) *Changes or additions to plant sites.* The provisions of paragraphs (i)(1) through (i)(4) of this section apply to owners or operators that change or add to their plant site or affected source. Paragraph (i)(5) of this section provides examples of what are and are not considered process changes for purposes of this paragraph (i) of this section. Paragraph (i)(6) of this section discusses reporting requirements.

(1) *Adding a TPPU to a plant site.* The provisions of paragraphs (i)(1)(i) and (i)(1)(ii) of this section apply to owners or operators that add one or more TPPUs to a plant site.

(i) If a group of one or more TPPUs that produce the same primary product is added to a plant site, the group of one or more TPPUs and associated equipment, as listed in paragraph (a)(4) of this section, shall be a new affected source and shall comply with the requirements for a new affected source in this subpart upon initial start-up or by February 27, 1998, whichever is later, if the criteria specified in either paragraph (i)(1)(i)(A) or (i)(1)(i)(B) of this section are met, and the criteria in either paragraph (i)(1)(i)(C) or (i)(1)(i)(D) of this section are met:

(A) The construction of the group of one or more TPPUs commenced after March 29, 1995.

(B) The construction or reconstruction, for process units that have become TPPUs, commenced after March 29, 1995.

(C) The group of one or more TPPUs and associated equipment, as listed in paragraph (a)(4) of this section, has the potential to emit 10 tons per year or more of any HAP or 25 tons per year or more of any combination of HAP, and the primary product of the group of one or more TPPUs is currently produced at the plant site as the primary product of an affected source; or

(D) The primary product of the group of one or more TPPUs is not currently produced at the plant site as the primary product of an affected source and the plant site meets, or after the addition of the group of one or more TPPUs and associated equipment, as listed in paragraph (a)(4) of this section, will meet the definition of a major source.

(ii) If a group of one or more TPPUs that produce the same primary product is added to a plant site, and the group of one or more TPPUs does not meet the criteria specified in paragraph (i)(1)(i) of this section, and the plant site meets, or after the addition will meet, the definition of a major source, the group of one or more TPPUs and associated equipment, as listed in paragraph (a)(4) of this section, shall comply with the requirements for an existing affected source in this subpart upon initial start-up; by September 12, 1999; or by 6 months after notifying the Administrator that a process unit has been designated as a TPPU (in accordance with paragraph (f)(3)(iii) of this section), whichever is later.

(2) * * *

(i) If any process change or addition is made to an existing affected source and said process change or addition meets the criteria specified in paragraphs (i)(2)(i)(A) through (i)(2)(i)(B) of this section, the affected source shall be a new affected source and shall be subject to the requirements for a new affected source in this subpart upon initial start-up or by February 27, 1998, whichever is later.

(A) It is a process change or addition that meets the definition of reconstruction in § 63.1312(b); and

* * * * *

(ii) If any process change is made that results in one or more Group 1 emission points (i.e., either newly created Group 1 emission points or emission points that change group status from Group 2 to Group 1); if any process change is made that results in baseline emissions (i.e., emissions prior to applying controls for purposes of complying with this rule) from continuous process vents in the collection of material recovery sections within the affected source at an existing affected source producing PET using a continuous dimethyl terephthalate process changing from less than or equal to 0.12 kg organic HAP per Mg of product to greater than 0.12 kg organic HAP per Mg of product; or if any other emission point(s) is added to an existing affected source (i.e., Group 2 emission point(s) or equipment leak components subject to § 63.1331) and the process change or addition does not meet the criteria specified in paragraphs (i)(2)(i)(A) through (i)(2)(i)(B) of this section, the resulting emission point(s)

shall be subject to the requirements for an existing affected source in this subpart. The emission point(s) shall be in compliance upon initial start-up or by the appropriate compliance date specified in § 63.1311 (i.e., February 27, 1998 for most equipment leak components subject to § 63.1331 and September 12, 1999 for emission points other than equipment leaks), whichever is later.

(3) *Existing affected source requirements for surge control vessels and bottoms receivers that become subject to subpart H requirements.* If a process change or addition of an emission point causes a surge control vessel or bottoms receiver to become subject to § 63.170 under this paragraph (i), the owner or operator shall be in compliance upon initial start-up or by September 12, 1999, whichever is later.

(4) *Existing affected source requirements for compressors that become subject to the requirements of subpart H of this part.* If a process change or the addition of an emission point causes a compressor to become subject to § 63.164 under this paragraph (i), the owner or operator shall be in compliance upon initial start-up or by the compliance date for that compressor as specified in § 63.1311(d)(1) through (d)(4), whichever is later.

(5) *Determining what are and are not process changes.* For purposes of paragraph (i) of this section, examples of process changes include, but are not limited to, changes in feedstock type, or catalyst type, or whenever there is a replacement, removal, or addition of recovery equipment, or changes that increase production capacity. For purposes of paragraph (i) of this section, process changes do not include: process upsets, unintentional temporary process changes, and changes that are within the equipment configuration and operating conditions documented in the Notification of Compliance Status report required by § 63.1335(e)(5).

(6) *Reporting requirements for owners or operators that change or add to their plant site or affected source.* Owners or operators that change or add to their plant site or affected source, as discussed in paragraphs (i)(1) and (i)(2) of this section, shall submit a report as specified in § 63.1335(e)(7)(iv).

(j) *Applicability of this subpart during periods of start-up, shutdown, malfunction, or non-operation.* Paragraphs (j)(1) through (j)(4) of this section shall be followed during periods of start-up, shutdown, malfunction, or non-operation of the affected source 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 source (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 required by § 63.6(e)(3). However, if a start-up, shutdown, malfunction, or period of non-operation of one portion of an affected source does not affect the ability of a particular emission point to comply with the emission limitations to which it is subject, then that emission point shall still be required to comply with the applicable emission limitations of this subpart during the start-up, shutdown, malfunction, or period of non-operation. For example, if there is an overpressure in the reactor area, a storage vessel that is part of the affected source would still be required to be controlled in accordance with the emission limitations in § 63.1314. Similarly, the degassing of a storage vessel would not affect the ability of a batch process vent to meet the emission limitations of §§ 63.1321 through 63.1327.

(2) The emission limitations set forth in subpart H of this part, as referred to in § 63.1331, shall apply at all times except during periods of non-operation of the affected source (or specific portion thereof) in which the lines are drained and depressurized resulting in cessation of the emissions to which § 63.1331 applies, or during periods of start-up, shutdown, malfunction, or process unit shutdown (as defined in § 63.161).

(3) 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 (or, where applicable, 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 (j)(3) does not apply if the item of equipment is malfunctioning. This paragraph 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 source 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 source or portion thereof, the owner or operator shall provide documentation supporting such a claim in the Precompliance Report or in a supplement to the Precompliance Report, as provided in § 63.1335(e)(3). Once approved by the Administrator in accordance with § 63.1335(e)(3)(viii), 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 source, as stated in § 63.1335(b)(1).

(4) During start-ups, shutdowns, and malfunctions when the emission limitations of this subpart do not apply pursuant to paragraphs (j)(1) through (j)(3) of this section, the owner or operator shall implement, to the extent reasonably available, measures to prevent or minimize excess emissions to the extent practical. For purposes of this paragraph, the term ''excess emissions'' means emissions in excess of those that would have occurred if there were no start-up, shutdown, or malfunction and the owner or operator complied with the relevant provisions of this subpart. The measures to be taken shall be identified in the applicable start-up, shutdown, and malfunction plan, and may include, but are not limited to, air pollution control technologies, recovery technologies, work practices, pollution prevention, monitoring, and/or changes in the manner of operation of the affected source. Back-up control devices are not required, but may be used if available.

30. Section 63.1311 is amended by:

a. Revising the section title and paragraphs (a), (d) introductory text, (d)(1) introductory text, (d)(2), (d)(3), and (d)(5), (e) introductory text, (h), (i)(1), (j), (l) and (m); and

b. Adding paragraph (d)(6), (e)(3), (i)(3), (n), and (o), to read as follows:

§ 63.1311 Compliance dates and relationship of this subpart to existing applicable rules.

(a) Affected sources are required to achieve compliance on or before the dates specified in paragraphs (b) through (d) of this section. Paragraph (e) of this section provides information on requesting compliance extensions. Paragraphs (f) through (n) of this section discuss the relationship of this subpart to subpart A of this part and to other applicable rules. Where an override of

another authority of the Act is indicated in this subpart, only compliance with the provisions of this subpart is required. Paragraph (o) of this section specifies the meaning of time periods.

* * * * *

(d) Except as provided for in paragraphs (d)(1) through (d)(6) of this section, existing affected sources shall be in compliance with § 63.1331 no later than February 27, 1998 unless an extension has been granted pursuant to paragraph (e) of this section.

(1) Compliance with the compressor provisions of § 63.164 shall occur no later than February 27, 1998 for any compressor meeting one or more of the criteria in paragraphs (d)(1)(i) through (d)(1)(iv) of this section, if the work can be accomplished without a process unit shutdown:

* * * * *

(2) Compliance with the compressor provisions of § 63.164 shall occur no later than March 12, 1998 for any compressor meeting all the criteria in paragraphs (d)(2)(i) through (d)(2)(iv) of this section:

(i) The compressor meets one or more of the criteria specified in paragraphs (d)(1)(i) through (d)(1)(iv) of this section;

(ii) The work can be accomplished without a process unit shutdown;

(iii) The additional time is actually necessary due to the unavailability of parts beyond the control of the owner or operator; and

(iv) The owner or operator submits the request for a compliance extension to the appropriate Environmental Protection Agency (EPA) Regional Office at the address listed in § 63.13 no later than June 16, 1997. The request for a compliance extension shall contain the information specified in § 63.6(i)(6)(i)(A), (B), and (D). Unless the EPA Regional Office objects to the request for a compliance extension within 30 days after receipt of the request, the request shall be deemed approved.

(3) If compliance with the compressor provisions of § 63.164 cannot reasonably be achieved without a process unit shutdown, the owner or operator shall achieve compliance no later than September 12, 1998. The owner or operator who elects to use this provision shall submit a request for a compliance extension in accordance with the requirements of paragraph (d)(2)(iv) of this section.

* * * * *

(5) Compliance with the provisions of § 63.170 shall occur no later than September 12, 1999.

(6) Notwithstanding paragraphs (d)(1) through (d)(5) of this section, existing affected sources whose primary product, as determined using the procedures specified in § 63.1310(f), is PET shall be in compliance with § 63.1331 no later than September 12, 1999.

(e) Pursuant to Section 112(i)(3)(B) of the Act, an owner or operator may request an extension allowing the existing affected source up to 1 additional year to comply with section 112(d) standards. For purposes of this subpart, a request for an extension shall be submitted to the permitting authority as part of the operating permit application or to the Administrator as a separate submittal or as part of the Precompliance Report. Requests for extensions shall be submitted no later than 120 days prior to the compliance dates specified in paragraphs (b) through (d) of this section, except as provided in paragraph (e)(3) of this section. The dates specified in § 63.6(i) for submittal of requests for extensions shall not apply to this subpart.

* * * * *

(3) An owner or operator may submit a compliance extension request after the date specified in paragraph (e) of this section, provided that the need for the compliance extension arose after that date, and the need arose due to circumstances beyond reasonable control of the owner or operator. This request shall include, in addition to the information specified in paragraph (e)(1) of this section, a statement of the reasons additional time is needed and the date when the owner or operator first learned of the circumstances necessitating a request for compliance extension under this paragraph (e)(3).

* * * * *

(h) After the compliance dates specified in this section, a storage vessel that is assigned to an affected source subject to this subpart and that is also subject to the provisions of 40 CFR part 60, subpart Kb, is required to comply only with the provisions of this subpart. After the compliance dates specified in this section, said storage vessel shall no longer be subject to 40 CFR part 60, subpart Kb.

(i)(1) Except as provided in paragraphs (i)(2) and (i)(3) of this section, after the compliance dates specified in this section, affected sources producing PET using a continuous terephthalic acid process, producing PET using a continuous dimethyl terephthalate process, or producing polystyrene resin using a continuous process subject to this subpart that are also subject to the provisions of 40 CFR part 60, subpart DDD, are required to comply only with the provisions of this subpart. After the compliance dates specified in this section, said sources shall no longer be subject to 40 CFR part 60, subpart DDD.

* * * * *

(3) Existing affected sources producing PET using a continuous terephthalic acid process, but not using a continuous terephthalic acid high viscosity multiple end finisher process, that are subject to and complying with 40 CFR 60.562–1(c)(2)(ii)(B) shall continue to comply with said section. Existing affected sources producing PET using a continuous dimethyl terephthalic process that are subject to and complying with 40 CFR 60.562–1(c)(1)(ii)(B) shall continue to comply with said section.

(j) Owners or operators of affected sources subject to this subpart that are also subject to the provisions of subpart Q of this part shall comply with both subparts.

* * * * *

(l) After the compliance dates specified in this section, a distillation operation that is assigned to an affected source subject to this subpart that is also subject to the provisions of 40 CFR part 60, subpart NNN, is required to comply only with the provisions of this subpart. After the compliance dates specified in this section, the distillation operation shall no longer be subject to 40 CFR part 60, subpart NNN.

(m) *Applicability of other regulations for monitoring, recordkeeping or reporting with respect to combustion devices, recovery devices, or recapture devices.* After the compliance dates specified in this subpart, if any combustion device, recovery device or recapture device subject to this subpart is also subject to monitoring, recordkeeping, and reporting requirements in 40 CFR part 264 subpart AA or CC, or is subject to monitoring and recordkeeping requirements in 40 CFR part 265 subpart AA or CC and the owner or operator complies with the periodic reporting requirements under 40 CFR part 264 subpart AA or CC that would apply to the device if the facility had final-permitted status, the owner or operator may elect to comply either with the monitoring, recordkeeping and reporting requirements of this subpart, or with the monitoring, recordkeeping and reporting requirements in 40 CFR parts 264 and/or 265, as described in this paragraph, which shall constitute compliance with the monitoring, recordkeeping and reporting requirements of this subpart. The owner or operator shall identify which option has been selected in the Notification of Compliance Status required by § 63.1335(e)(5).

(n) *Applicability of other requirements for heat exchange systems or waste management units.* Paragraphs (n)(1) and (n)(2) of this section address instances in which certain requirements from other regulations also apply for the same heat exchange system(s) or waste management unit(s) that are subject to this subpart.

(1) After the applicable compliance date specified in this subpart, if a heat exchange system subject to this subpart is also subject to a standard identified in paragraphs (n)(1)(i) or (ii) of this section, compliance with the applicable provisions of the standard identified in paragraphs (n)(1)(i) or (ii) of this section shall constitute compliance with the applicable provisions of this subpart with respect to that heat exchange system.

(i) Subpart F of this part.

(ii) A subpart of this part which requires compliance with § 63.104 of subpart F of this part (e.g., subpart U of this part).

(2) After the applicable compliance date specified in this subpart, if any waste management unit subject to this subpart is also subject to a standard identified in paragraph (n)(2)(i) or (ii) of this section, compliance with the applicable provisions of the standard identified in paragraph (n)(2)(i) or (ii) of this section shall constitute compliance with the applicable provisions of this subpart with respect to that waste management unit.

(i) Subpart G of this part.

(ii) A subpart of this part which requires compliance with §§ 63.132 through 63.147 of subpart G of this part (e.g., subpart U of this part).

(o) All terms in this subpart that define a period of time for completion of required tasks (e.g., weekly, monthly, quarterly, annual), unless specified otherwise in the section or paragraph that imposes the requirement, refer to the standard calendar periods.

(1) Notwithstanding time periods specified in this subpart for completion of required tasks, such time periods may be changed by mutual agreement between the owner or operator and the Administrator, as specified in subpart A of this part (e.g., a period could begin on the compliance date or another date, rather than on the first day of the standard calendar period). For each time period that is changed by agreement, the revised period shall remain in effect until it is changed. A new request is not necessary for each recurring period.

(2) Where the period specified for compliance is a standard calendar period, if the initial compliance date occurs after the beginning of the period, compliance shall be required according to the schedule specified in paragraphs (o)(2)(i) or (o)(2)(ii) of this section, as appropriate.

(i) Compliance shall be required before the end of the standard calendar period within which the compliance deadline occurs, if there remain at least 3 days for tasks that must be performed weekly, at least 2 weeks for tasks that must be performed monthly, at least 1 month for tasks that must be performed each quarter, or at least 3 months for tasks that must be performed annually; or

(ii) In all other cases, compliance shall be required before the end of the first full standard calendar period after the period within which the initial compliance deadline occurs.

(3) In all instances where a provision of this subpart requires completion of a task during each of multiple successive periods, an owner or operator may perform the required task at any time during the specified period, provided that the task is conducted at a reasonable interval after completion of the task during the previous period.

31. Section 63.1312 is amended:

a. By revising paragraph (a) and the definitions for ''Acrylonitrile butadiene styrene latex resin (ABS latex),'' ''Aggregate batch vent stream,'' ''Batch process,'' ''Batch process vent,'' ''Batch unit operation,'' ''Continuous process,'' ''Continuous process vent,'' ''Continuous unit operation,'' ''Control device,'' ''Emission point,'' ''Emulsion process,'' ''Group 1 batch process vent,'' ''Group 1 wastewater stream,'' ''Heat exchange system,'' ''Maintenance wastewater,'' ''Mass process,'' ''Material recovery section,'' ''Organic hazardous air pollutant(s) (organic HAP),'' ''Polymerization reaction section,'' ''Process unit,'' ''Process vent,'' ''Product,'' ''Raw materials preparation section,'' ''Recovery operations equipment,'' ''Steady-state conditions,'' ''Storage vessel,'' ''Suspension process,'' and ''Thermoplastic product process unit (TPPU),'';

b. By removing the definitions of ''Average flow rate,'' ''Batch cycle limitation,'' ''Solid state polymerization unit,'' and ''Year,''; and

c. By adding definitions for the terms ''Annual average batch vent concentration,'' ''Annual average batch vent flow rate,'' ''Annual average concentration,'' ''Annual average flow rate,'' ''Average batch vent concentration,'' ''Average batch vent flow rate,'' ''Batch mass input limitation,'' ''Batch mode,'' ''Combined vent stream,'' ''Construction,'' ''Continuous mode,'' ''Continuous record,'' ''Continuous recorder,'' ''Equipment,'' ''Existing affected source,'' ''Existing process unit,'' ''Flexible operation unit,'' ''Highest-HAP recipe,'' ''Initial start-up,'' ''Maximum true vapor pressure,'' ''Multicomponent system,'' ''Net positive heating value,'' ''New affected source,'' ''New process unit,'' ''On-site or On site,'' ''Operating day,'' ''Recipe,'' ''Reconstruction,'' ''Recovery device,'' ''Residual,'' ''Shutdown,'' ''Solid state polymerization process,'' ''Start-up,'' ''Total resource effectiveness index value or TRE index value,'' ''Vent stream,'' ''Waste management unit,'' ''Wastewater,'' and ''Wastewater stream,'' to read as follows:

§ 63.1312 Definitions.

(a) The following terms used in this subpart shall have the meaning given them in § 63.2, § 63.101, § 63.111, § 63.161, or the Act, as specified after each term:

Act (§ 63.2)
Administrator (§ 63.2)
Automated monitoring and recording system (§ 63.111)
Boiler (§ 63.111)
Bottoms receiver (§ 63.161)
By compound (§ 63.111)
By-product (§ 63.101)
Car-seal (§ 63.111)
Closed-vent system (§ 63.111)
Combustion device (§ 63.111)
Commenced (§ 63.2)
Compliance date (§ 63.2)
Connector (§ 63.161)
Continuous monitoring system (§ 63.2)
Distillation unit (§ 63.111)
Duct work (§ 63.161)
Emission limitation (Section 302(k) of the Act)
Emission standard (§ 63.2)
Emissions averaging (§ 63.2)
EPA (§ 63.2)
Equipment leak (§ 63.101)
External floating roof (§ 63.111)
Fill or filling (§ 63.111)
First attempt at repair (§ 63.111)
Fixed capital cost (§ 63.2)
Flame zone (§ 63.111)
Floating roof (§ 63.111)
Flow indicator (§ 63.111)
Fuel gas system (§ 63.101)
Halogens and hydrogen halides (§ 63.111)
Hard-piping (§ 63.111)
Hazardous air pollutant (§ 63.2)
Impurity (§ 63.101)
In organic hazardous air pollutant service or in organic HAP service (§ 63.161)
Incinerator (§ 63.111)
Instrumentation system (§ 63.161)
Internal floating roof (§ 63.111)
Lesser quantity (§ 63.2)
Major source (§ 63.2)
Malfunction (§ 63.2)
Open-ended valve or line (§ 63.161)
Operating permit (§ 63.101)
Organic monitoring device (§ 63.111)
Owner or operator (§ 63.2)
Performance evaluation (§ 63.2)
Performance test (§ 63.2)
Permitting authority (§ 63.2)

Plant site (§ 63.101)
Potential to emit (§ 63.2)
Pressure release (§ 63.161)
Primary fuel (§ 63.111)
Process heater (§ 63.111)
Process unit shutdown (§ 63.161)
Process wastewater (§ 63.101)
Process wastewater stream (§ 63.111)
Reactor (§ 63.111)
Recapture device (§ 63.101)
Research and development facility (§ 63.101)
Routed to a process or route to a process (§ 63.161)
Run (§ 63.2)
Secondary fuel (§ 63.111)
Sensor (§ 63.161)
Specific gravity monitoring device (§ 63.111)
Start-up, shutdown, and malfunction plan (§ 63.101)
State (§ 63.2)
Stationary Source (§ 63.2)
Surge control vessel (§ 63.161)
Temperature monitoring device (§ 63.111)
Test method (§ 63.2)
Treatment process (§ 63.111)
Unit operation (§ 63.101)
Visible emission (§ 63.2)

(b) * * *

Acrylonitrile butadiene styrene latex resin (ABS latex) means ABS produced through an emulsion process; however, the product is not coagulated or dried as typically occurs in an emulsion process.

* * * * *

Aggregate batch vent stream means a gaseous emission stream containing only the exhausts from two or more batch process vents that are ducted, hardpiped, or otherwise connected together for a continuous flow .

* * * * *

Annual average batch vent concentration is determined using Equation 1, as described in § 63.1323(h)(2) for halogenated compounds.

Annual average batch vent flow rate is determined by the procedures in § 63.1323(e)(3).

Annual average concentration, as used in the wastewater provisions, means the flow-weighted annual average concentration, as determined according to the procedures specified in § 63.144(b), with the exceptions noted in § 63.1330, for the purposes of this subpart.

Annual average flow rate, as used in the wastewater provisions, means the annual average flow rate, as determined according to the procedures specified in § 63.144(c), with the exceptions noted in § 63.1330, for the purposes of this subpart.

Average batch vent concentration is determined by the procedures in § 63.1323(b)(5)(iii) for HAP concentrations and is determined by the procedures in § 63.1323(h)(1)(iii) for organic compounds containing halogens and hydrogen halides.

Average batch vent flow rate is determined by the procedures in § 63.1323 (e)(1) and (e)(2).

* * * * *

Batch mass input limitation means an enforceable restriction on the total mass of HAP or material that can be input to a batch unit operation in one year.

Batch mode means the discontinuous bulk movement of material through a unit operation. Mass, temperature, concentration, and other properties may vary with time. For a unit operation operated in a batch mode (i.e., batch unit operation), the addition of material and withdrawal of material do not typically occur simultaneously.

Batch process means, for the purposes of this subpart, a process where the reactor(s) is operated in a batch mode.

Batch process vent means a process vent with annual organic HAP emissions greater than 225 kilograms per year from a batch unit operation within an affected source. Annual organic HAP emissions are determined as specified in § 63.488(b) at the location specified in § 63.1323(a)(2).

Batch unit operation means a unit operation operated in a batch mode.

Combined vent stream, as used in reference to batch process vents, continuous process vents, and aggregate batch vent streams, means the emissions from a combination of two or more of the aforementioned types of process vents. The primary occurrence of a combined vent stream is the combined emissions from a continuous process vent and a batch process vent.

* * * * *

Construction means the on-site fabrication, erection, or installation of an affected source. Construction also means the on-site fabrication, erection, or installation of a process unit or combination of process units which subsequently becomes an affected source or part of an affected source, due to a change in primary product.

Continuous mode means the continuous movement of material through a unit operation. Mass, temperature, concentration, and other properties typically approach steady-state conditions. For a unit operation operated in a continuous mode (i.e., continuous unit operation), the simultaneous addition of raw material and withdrawal of product is typical.

Continuous process means, for the purposes of this subpart, a process where the reactor(s) is operated in a continuous mode.

Continuous process vent means a process vent containing greater than 0.005 weight percent total organic HAP from a continuous unit operation within an affected source. The total organic HAP weight percent is determined after the last recovery device, as described in § 63.115(a), and is determined as specified in § 63.115(c).

Continuous record means documentation, either in hard copy or computer readable form, of data values measured at least once every 15 minutes and recorded at the frequency specified in § 63.1335(d) or § 63.1335(h).

Continuous recorder means a data recording device that either records an instantaneous data value at least once every 15 minutes or records 1-hour or more frequent block average values.

Continuous unit operation means a unit operation operated in a continuous mode.

Control device is defined in § 63.111, except that the term ''continuous process vents subject to § 63.1315'' shall apply instead of the term ''process vents,'' for the purpose of this subpart.

* * * * *

Emission point means an individual continuous process vent, batch process vent, storage vessel, waste management unit, equipment leak, heat exchange system, or process contact cooling tower, or equipment subject to § 63.149.

Emulsion process means a process where the monomer(s) is dispersed in droplets throughout the water phase with the aid of an emulsifying agent such as soap or a synthetic emulsifier. The polymerization occurs either within the emulsion droplet or in the aqueous phase.

Equipment means, for the purposes of the provisions in § 63.1331 and the requirements in subpart H that are referred to in § 63.1331, each pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, surge control vessel, bottoms receiver, and instrumentation system in organic hazardous air pollutant service; and any control devices or systems required by subpart H.

Existing affected source is defined in § 63.1310(a)(3).

Existing process unit means any process unit that is not a new process unit.

* * * * *

Flexible operation unit means a process unit that manufactures different chemical products, polymers, or resins periodically by alternating raw materials or operating conditions. These units are also referred to as campaign plants or blocked operations.

Group 1 batch process vent means a batch process vent releasing annual organic HAP emissions greater than the level specified in § 63.1323(d) and with

a cutoff flow rate, calculated in accordance with § 63.1323(f), greater than or equal to the annual average batch vent flow rate. Annual organic HAP emissions and annual average batch vent flow rate are determined at the exit of the batch unit operation, as described in § 63.1323(a)(2). Annual organic HAP emissions are determined as specified in § 63.1323(b), and annual average batch vent flow rate is determined as specified in § 63.1323(e).

* * * * *

Group 1 wastewater stream means a wastewater stream consisting of process wastewater from an existing or new affected source that meets the criteria for Group 1 status in § 63.132(c) and/or that meets the criteria for Group 1 status in § 63.132(d), with the exceptions listed in § 63.1330(b)(8) for the purposes of this subpart (i.e., for organic HAP listed on Table 6 of this subpart only).

* * * * *

Heat exchange system means any cooling tower system or once-through cooling water system (e.g., river or pond water) designed and intended to operate to not allow contact between the cooling medium and process fluid or gases (i.e., a noncontact system). A heat exchange system can include more than one heat exchanger and can include recirculating or once-through cooling systems.

Highest-HAP recipe for a product means the recipe of the product with the highest total mass of HAP charged to the reactor during the production of a single batch of product.

Initial start-up means the first time a new or reconstructed affected source begins production of a thermoplastic product, or, for equipment added or changed as described in § 63.1310(i), the first time the equipment is put into operation to produce a thermoplastic product. Initial start-up does not include operation solely for testing equipment. Initial start-up does not include subsequent start-ups of an affected source or portion thereof following malfunctions or shutdowns or following changes in product for flexible operation units or following recharging of equipment in batch operation. Further, for purposes of § 63.1311 and § 63.1331, initial start-up does not include subsequent start-ups of affected sources or portions thereof following malfunctions or process unit shutdowns.

Maintenance wastewater is defined in § 63.101, except that the term ''thermoplastic product process unit'' shall apply wherever the term ''chemical manufacturing process unit'' is used. Further, the generation of wastewater from the routine rinsing or washing of equipment in batch operation between batches is not maintenance wastewater, but is considered to be process wastewater, for the purposes of this subpart.

Mass process means a polymerization process carried out through the use of thermal energy . Mass processes do not utilize emulsifying or suspending agents, but may utilize catalysts or other additives.

Material recovery section means, for PET plants, the equipment that recovers unreacted ethylene glycol or by-product methanol from any process section for return to the TPPU, or sale, or the equipment that separates materials containing unreacted ethylene glycol or by-product methanol from any process section for off-site purification or treatment with the intent to recover ethylene glycol and/or methanol for reuse. For polystyrene plants, *material recovery section* means the equipment that recovers unreacted styrene from any process section for return to the TPPU or sale, or the equipment that separates materials containing unreacted styrene from any process section for off-site purification or treatment with the intent to recover styrene for reuse. Equipment used to store recovered materials (i.e., ethylene glycol, methanol, or styrene) is not included. Equipment designed to recover or separate materials from the polymer product is to be included in this process section, provided that at the time of initial compliance some of the unreacted or by-product material is recovered for return to the TPPU, or sale, or some of the separated material is sent for off-site purification or treatment with the intent to recover the unreacted or by-product material for reuse. Otherwise, such equipment is to be assigned to one of the other process sections, as appropriate. If equipment is used to recover unreacted or by-product material and return it directly to the same piece of process equipment from which it was emitted, then said recovery equipment is considered part of the process section that contains the process equipment. On the other hand, if equipment is used to recover unreacted or by-product material and return it to a different piece of process equipment in the same process section, said recovery equipment is considered part of a material recovery section. Equipment used for the on-site recovery of ethylene glycol from PET plants, however, is not included in the material recovery section; such equipment is to be included in the polymerization reaction section. Equipment used for the on-site recovery of both ethylene glycol and any other materials from PET plants is not included in the material recovery section; this equipment is to be included in the polymerization reaction section.

Maximum true vapor pressure is defined in § 63.111, except that the terms ''transfer'' or ''transferred'' shall not apply for purposes of this subpart.

* * * * *

Multicomponent system means, as used in conjunction with batch process vents, a stream whose liquid and/or vapor contains more than one compound.

Net positive heating value means the difference between the heat value of the recovered chemical stream and the minimum heat value required to ensure a stable flame in the combustion device, when the heat value of the recovered chemical stream is less than the minimum heat value required to ensure a stable flame. This difference must have a positive value when used in the context of ''recovering chemicals for fuel value'' (e.g., in the definition of ''recovery device'' in this section).

New affected source is defined in § 63.1310(a)(4).

New process unit means a process unit for which the construction or reconstruction commenced after March 29, 1995.

* * * * *

On-site or *On site* means, with respect to records required to be maintained by this subpart or required by another subpart referenced by this subpart, that records are stored at a location within a major source which encompasses the affected source. On-site includes, but is not limited to, storage at the affected source or TPPU to which the records pertain, or storage in central files elsewhere at the major source.

Operating day means the period defined by the owner or operator in the Notification of Compliance Status required by § 63.1335(e)(5). The operating day is the period for which daily average monitoring values and batch cycle daily average monitoring values are determined.

Organic hazardous air pollutant(s) (organic HAP) means one or more of the chemicals listed in Table 6 of this subpart or any other chemical which is:

(1) Knowingly produced or introduced into the manufacturing process other than as an impurity; and

(2) Listed in Table 2 of subpart F of this part.

* * * * *

Polymerization reaction section means the equipment designed to cause monomer(s) to react to form polymers, including equipment designed primarily to cause the formation of short polymer

chains (e.g., oligomers or low molecular weight polymers), but not including equipment designed to prepare raw materials for polymerization (e.g., esterification vessels). For the purposes of these standards, the polymerization reaction section begins with the equipment used to transfer the materials from the raw materials preparation section and ends with the last vessel in which polymerization occurs. Equipment used for the on-site recovery of ethylene glycol from PET plants is included in this process section, rather than in the material recovery process section.

* * * * *

Process unit means a collection of equipment assembled and connected by hardpiping or duct work, used to process raw materials and to manufacture a product.

Process vent means a gaseous emission stream from a unit operation that is discharged to the atmosphere either directly or after passing through one or more control, recovery, or recapture devices. Unit operations that may have process vents are condensers, distillation units, reactors, or other unit operations within the TPPU. Process vents exclude pressure releases, gaseous streams routed to a fuel gas system(s), and leaks from equipment regulated under § 63.1331. A gaseous emission stream is no longer considered to be a process vent after the stream has been controlled and monitored in accordance with the applicable provisions of this subpart.

Product means a polymer produced using the same monomers and varying in additives (e.g., initiators, terminators, etc.); catalysts; or in the relative proportions of monomers, that is manufactured by a process unit. With respect to polymers, more than one recipe may be used to produce the same product. As an example, styrene acrylonitrile resin and methyl methacrylate butadiene styrene resin each represent a different product. Product also means a chemical that is not a polymer, that is manufactured by a process unit. By-products, isolated intermediates, impurities, wastes, and trace contaminants are not considered products.

Raw materials preparation section means the equipment at a polymer manufacturing plant designed to prepare raw materials, such as monomers and solvents, for polymerization. For the purposes of the standards in this subpart, this process section includes the equipment used to transfer raw materials from storage and/or the equipment used to transfer recovered material from the material recovery process sections to the raw material preparation section, and ends with the last piece of equipment that prepares the material for polymerization. The raw materials preparation section may include equipment that is used to purify, dry, or otherwise treat raw materials or raw and recovered materials together; to activate catalysts; or to promote esterification including the formation of some short polymer chains (oligomers). The raw materials preparation section does not include equipment that is designed primarily to accomplish the formation of oligomers, the treatment of recovered materials alone, or the storage of raw or recovered materials.

Recipe means a specific composition, from among the range of possible compositions that may occur within a product, as defined in this section. A recipe is determined by the proportions of monomers and, if present, other reactants and additives that are used to make the recipe. For example, acrylonitrile butadiene styrene latex resin (ABS latex) without additives; ABS latex with an additive; and ABS latex with different proportions of acrylonitrile to butadiene are all different recipes of the same product, ABS latex.

Reconstruction means the replacement of components of an affected source or of a previously unaffected stationary source that becomes an affected source as a result of the replacement, to such an extent that:

(1) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable new source; and

(2) It is technologically and economically feasible for the reconstructed source to meet the provisions of this subpart.

Recovery device means:

(1) An individual unit of equipment capable of and normally used for the purpose of recovering chemicals for:

(i) Use;

(ii) Reuse;

(iii) Fuel value (i.e., net heating value); or

(iv) For sale for use, reuse, or fuel value (i.e., net heating value).

(2) 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 the purposes of the monitoring, recordkeeping, or reporting requirements of this subpart, recapture devices are considered recovery devices.

Recovery operations equipment means the equipment used to separate the components of process streams. Recovery operations equipment includes distillation units, condensers, etc. Equipment used for wastewater treatment and recovery or recapture devices used as control devices shall not be considered recovery operations equipment.

Residual is defined in § 63.111, except that when the definition in § 63.111 uses the term ''Table 9 compounds,'' the term ''organic HAP listed in Table 6 of subpart JJJ'' shall apply for purposes of this subpart.

Shutdown means for purposes including, but not limited to, periodic maintenance, replacement of equipment, or repair, the cessation of operation of an affected source, a TPPU(s) within an affected source, a waste management unit or unit operation within an affected source, or equipment required or used to comply with this subpart, or the emptying or degassing of a storage vessel. For purposes of the wastewater provisions of § 63.1330, shutdown does not include the routine rinsing or washing of equipment in batch operation between batches. For purposes of the batch process vent provisions in §§ 63.1321 through 63.1327, the cessation of equipment in batch operation is not a shutdown, unless the equipment undergoes maintenance, is replaced, or is repaired.

Solid state polymerization process means a unit operation which, through the application of heat, furthers the polymerization (i.e., increases the intrinsic viscosity) of polymer chips.

Start-up means the setting into operation of an affected source, a TPPU(s) within an affected source, a waste management unit or unit operation within an affected source, or equipment required or used to comply with this subpart, or a storage vessel after emptying and degassing. For both continuous and batch processes, start-up includes initial start-up and operation solely for testing equipment. For both continuous and batch processes, start-up does not include the recharging of equipment in batch operation. For continuous processes, start-up includes transitional conditions due to changes in product for flexible operation units. For batch processes, start-up does not include transitional conditions due to changes in product for flexible operation units.

Steady-state conditions means that all variables (temperatures, pressures, volumes, flow rates, etc.) in a process do

not vary significantly with time; minor fluctuations about constant mean values may occur.

Storage vessel means a tank or other vessel that is used to store liquids that contain one or more organic HAP. Storage vessels do not include:

(1) Vessels permanently attached to motor vehicles such as trucks, railcars, barges, or ships;

(2) Pressure vessels designed to operate in excess of 204.9 kilopascals and without emissions to the atmosphere;

(3) Vessels with capacities smaller than 38 cubic meters;

(4) Vessels and equipment storing and/or handling material that contains no organic HAP and/or organic HAP as impurities only;

(5) Wastewater storage tanks; and

(6) Surge control vessels and bottoms receivers.

* * * * *

Suspension process means a polymerization process where the monomer(s) is in a state of suspension, with the help of suspending agents, in a medium other than water (typically an organic solvent). The resulting polymers are not soluble in the reactor medium.

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* * * * *

Thermoplastic product process unit (TPPU) means a collection of equipment assembled and connected by hard-piping or ductwork, used to process raw materials and to manufacture a thermoplastic product as its primary product. This collection of equipment includes unit operations; recovery operations equipment, process vents; equipment identified in § 63.149; storage vessels, as determined in § 63.1310(g); and the equipment that is subject to the equipment leak provisions as specified in § 63.1331. Utilities, lines and equipment not containing process fluids, and other non-process lines, such as heating and cooling systems which do not combine their materials with those in the processes they serve, are not part of the thermoplastic product process unit. A thermoplastic product process unit consists of more than one unit operation.

* * * * *

Total resource effectiveness index value or TRE index value means a measure of the supplemental total resource requirement per unit reduction organic HAP associated with a continuous process vent stream, based on vent stream flow rate, emission rate of organic HAP, net heating value, and corrosion properties (whether or not the continuous process vent stream contains halogenated compounds), as quantified by the equations given under § 63.115.

Vent stream, as used in reference to batch process vents, continuous process vents, and aggregate batch vent streams, means the emissions from one or more process vents.

Waste management unit is defined in § 63.111, except that where the definition in § 63.111 uses the term ''chemical manufacturing process unit,'' the term ''TPPU'' shall apply for purposes of this subpart.

Wastewater means water that:

(1) Contains either:

(i) An annual average concentration of organic HAP listed on Table 6 of this subpart, except for ethylene glycol, of at least 5 parts per million by weight and has an annual average flow rate of 0.02 liter per minute or greater; or

(ii) An annual average concentration of organic HAP listed on Table 6 of this subpart, except for ethylene glycol, of at least 10,000 parts per million by weight at any flow rate; and

(2) Is discarded from a TPPU that is part of an affected source. Wastewater is process wastewater or maintenance wastewater.

Wastewater stream means a stream that contains wastewater as defined in this section.

32. Section 63.1313 is amended by revising paragraph (a) introductory text, (a)(2), (b), and (c); and adding paragraph (d), to read as follows:

§ 63.1313 Emission standards.

(a) Except as allowed under paragraphs (b) through (d) of this section, the owner or operator of an existing or new affected source shall comply with the provisions in:

* * * * *

(2) Section 63.1315, or §§ 63.1316 through 63.1320, as appropriate, for continuous process vents;

* * * * *

(b) When emissions of different kinds (i.e., emissions from continuous process vents subject to either § 63.1315 or §§ 63.1316 through 63.1320, batch process vents, aggregate batch vent streams, storage vessels, process wastewater, and/or in-process equipment subject to § 63.149) are combined, and at least one of the emission streams would be classified as Group 1 in the absence of combination with other emission streams, the owner or operator shall comply with the requirements of either paragraph (b)(1) or (b)(2) of this section, as appropriate. For purposes of this paragraph (b), combined emission streams containing one or more batch process vents and containing one or more continuous process vents subject to § 63.1315, § 63.1316(b)(1)(i)(A), § 63.1316(b)(1)(ii), § 63.1316(b)(2)(i), § 63.1316(b)(2)(ii), or § 63.1316(c)(1), excluding § 63.1316(c)(1)(ii), may comply with either paragraph (b)(1) or (b)(2) of this section, as appropriate. For purposes of this paragraph (b), the owner or operator of an affected source with combined emission streams containing one or more batch process vents but not containing one or more continuous process vents subject to § 63.1315, § 63.1316(b)(1)(i)(A), § 63.1316(b)(1)(ii), § 63.1316(b)(2)(i), § 63.1316(b)(2)(ii), or § 63.1316(c)(1), excluding § 63.1316(c)(1)(ii), shall comply with paragraph (b)(3) of this section.

(1) Comply with the applicable requirements of this subpart for each kind of emission in the stream as specified in paragraphs (a)(1) through (a)(7) of this section.

(2) Comply with the first set of requirements, identified in paragraphs (b)(2)(i) through (b)(2)(vi) of this section, which applies to any individual emission stream that is included in the combined stream, where either that emission stream would be classified as Group 1 in the absence of combination with other emission streams, or the owner or operator chooses to consider that emission stream to be Group 1 for purposes of this paragraph. Compliance with the first applicable set of requirements identified in paragraphs (b)(2)(i) through (b)(2)(vi) of this section constitutes compliance with all other requirements in paragraphs (b)(2)(i) through (b)(2)(vi) of this section applicable to other types of emissions in the combined stream.

(i) The requirements of this subpart for Group 1 continuous process vents subject to § 63.1315, including applicable monitoring, recordkeeping, and reporting;

(ii) The requirements of § 63.1316(b)(1)(i)(A), § 63.1316(b)(1)(ii), § 63.1316(b)(2)(i), § 63.1316(b)(2)(ii), or § 63.1316(c)(1), excluding § 63.1316(c)(1)(ii), as appropriate, for control of emissions from continuous process vents subject to the control requirements of § 63.1316, including applicable monitoring, recordkeeping, and reporting requirements;

(iii) The requirements of § 63.119(e), as specified in § 63.1314, for control of emissions from Group 1 storage vessels, including applicable monitoring, recordkeeping, and reporting;

(iv) The requirements of § 63.139, as specified in § 63.1330, for control devices used to control emissions from waste management units, including applicable monitoring, recordkeeping, and reporting;

(v) The requirements of § 63.139, as specified in § 63.1330, for closed vent

systems for control of emissions from in-process equipment subject to § 63.149, as specified in § 63.1330, including applicable monitoring, recordkeeping, and reporting; or

(vi) The requirements of this subpart for aggregate batch vent streams subject to § 63.1321(c), including applicable monitoring, recordkeeping, and reporting.

(3) The owner or operator of an affected source with combined emission streams containing one or more batch process vents but not containing one or more continuous process vents subject to § 63.1315, § 63.1316(b)(1)(i)(A), § 63.1316(b)(1)(ii), § 63.1316(b)(2)(i), § 63.1316(b)(2)(ii), or § 63.1316(c)(1), excluding § 63.1316(c)(1)(ii), shall comply with paragraph (b)(3)(i) and (b)(3)(ii) of this section.

(i) The owner or operator of the affected source shall comply with § 63.1321 for the batch process vent(s).

(ii) The owner or operator of the affected source shall comply with either paragraph (b)(1) or (b)(2) of this section, as appropriate, for the remaining emission streams.

(c) Instead of complying with §§ 63.1314, 63.1315, 63.1316 through 63.1320, 63.1321, and 63.1330, the owner or operator of an existing affected source may elect to control any or all of the storage vessels, batch process vents, aggregate batch vent streams, continuous process vents, and wastewater streams and associated waste management units within the affected source to different levels using an emissions averaging compliance approach that uses the procedures specified in § 63.1332. The restrictions concerning which emission points may be included in an emissions average, including how many emission points may be included, are specified in § 63.1332(a)(1). An owner or operator electing to use emissions averaging shall still comply with the provisions of §§ 63.1314, 63.1315, 63.1316 through 63.1320, 63.1321, and 63.1330 for affected source emission points not included in the emissions average.

(d) A State may decide not to allow the use of the emissions averaging compliance approach specified in paragraph (c) of this section.

33. Section 63.1314 is amended by revising paragraphs (a) introductory text, (a)(1) through (a)(3), (a)(5) through (a)(16), (b) introductory text, and (c); and adding paragraphs (a)(17) and (b)(3), to read as follows:

§ 63.1314 Storage vessel provisions.

(a) This section applies to each storage vessel that is assigned to an affected source, as determined by § 63.1310(g). Except as provided in paragraphs (b) through (d) of this section, the owner or operator of an affected source shall comply with the requirements of §§ 63.119 through 63.123 and 63.148 for those storage vessels, with the differences noted in paragraphs (a)(1) through (a)(17) of this section for the purposes of this subpart.

(1) When the term ''storage vessel'' is used in §§ 63.119 through 63.123, the definition of this term in § 63.1312 shall apply for the purposes of this subpart.

(2) When the term ''Group 1 storage vessel'' is used in §§ 63.119 through 63.123, the definition of this term in § 63.1312 shall apply for the purposes of this subpart.

(3) When the term ''Group 2 storage vessel'' is used in §§ 63.119 through 63.123, the definition of this term in § 63.1312 shall apply for the purposes of this subpart.

* * * * *

(5) When December 31, 1992, is referred to in § 63.119, March 29, 1995 shall apply instead, for the purposes of this subpart.

(6) When April 22, 1994, is referred to in § 63.119, September 12, 1996 shall apply instead, for the purposes of this subpart.

(7) Each owner or operator of an affected source shall comply with this paragraph (a)(7) instead of § 63.120(d)(1)(ii) for the purposes of this subpart. If the control device used to comply with § 63.119(e) is also used to comply with any of the requirements found in § 63.1315, § 63.1316, § 63.1322, or § 63.1330, the performance test required in or accepted by the applicable requirements of §§ 63.1315, 63.1316, 63.1322, and 63.1330 is acceptable for demonstrating compliance with § 63.119(e) for the purposes of this subpart. The owner or operator is not required to prepare a design evaluation for the control device as described in § 63.120(d)(1)(i), if the performance test meets the criteria specified in paragraphs (a)(7)(i) and (a)(7)(ii) of this section.

(i) The performance test demonstrates that the control device achieves greater than or equal to the required control efficiency specified in § 63.119(e)(1) or § 63.119(e)(2), as applicable; and

(ii) The performance test is submitted as part of the Notification of Compliance Status required by § 63.1335(e)(5).

(8) When the term ''operating range'' is used in § 63.120(d)(3), the term ''level'' shall apply instead, for the purposes of this subpart.

(9) For purposes of this subpart, the monitoring plan required by § 63.120(d)(2) shall specify for which control devices the owner or operator has selected to follow the procedures for continuous monitoring specified in § 63.1334. For those control devices for which the owner or operator has selected to not follow the procedures for continuous monitoring specified in § 63.1334, the monitoring plan shall include a description of the parameter or parameters to be monitored to ensure that the control device is being properly operated and maintained, an explanation of the criteria used for selection of that parameter (or parameters), and the frequency with which monitoring will be performed (e.g., when the liquid level in the storage vessel is being raised), as specified in § 63.120(d)(2)(i).

(10) For purposes of this subpart, the monitoring plan required by § 63.122(b) shall be included in the Notification of Compliance Status required by § 63.1335(e)(5).

(11) When the Notification of Compliance Status requirements contained in § 63.152(b) are referred to in §§ 63.120, 63.122, and 63.123, the Notification of Compliance Status requirements contained in § 63.1335(e)(5) shall apply for the purposes of this subpart.

(12) When the Periodic Report requirements contained in § 63.152(c) are referred to in §§ 63.120, 63.122, and 63.123, the Periodic Report requirements contained in § 63.1335(e)(6) shall apply for the purposes of this subpart.

(13) When other reports as required in § 63.152(d) are referred to in § 63.122, the reporting requirements contained in § 63.1335(e)(7) shall apply for the purposes of this subpart.

(14) When the Initial Notification requirements contained in § 63.151(b) are referred to in § 63.122, the owner or operator of an affected source subject to this subpart need not comply for the purposes of this subpart.

(15) When the determination of equivalence criteria in § 63.102(b) is referred to in § 63.121(a), the provisions in § 63.6(g) shall apply for the purposes of this subpart.

(16) When § 63.119(a) requires compliance according to the schedule provisions in § 63.100, owners and operators of affected sources shall instead comply with the requirements in §§ 63.119(a)(1) through 63.119(a)(4) by the compliance date for storage vessels, which is specified in § 63.1311.

(17) In § 63.120(e)(1), instead of the reference to § 63.11(b), the requirements of § 63.1333(e) shall apply.

(b) Owners or operators of Group 1 storage vessels that are assigned to a new affected source producing SAN

using a continuous process shall control emissions to the levels indicated in paragraphs (b)(1) and (b)(2) of this section.

* * * * *

(3) For all other storage vessels designated as Group 1 storage vessels, emissions shall be controlled to the level designated in § 63.119.

(c) Owners or operators of Group 1 storage vessels that are assigned to a new or existing affected source producing ASA/AMSAN shall control emissions by at least 98 percent relative to uncontrolled emissions.

* * * * *

34. Section 63.1315 is amended by revising paragraphs (a) (1) through (4), (a)(9) through (a)(17), (b) introductory text, (b)(1)(ii), (c), and (d), to read as follows:

§ 63.1315 Continuous process vents provisions.

(a) * * *

(1) When the term ''process vent'' is used in §§ 63.113 through 63.118, the term ''continuous process vent,'' and the definition of this term in § 63.1312 shall apply for the purposes of this subpart.

(2) When the term ''Group 1 process vent'' is used in §§ 63.113 through 63.118, the term ''Group 1 continuous process vent,'' and the definition of this term in § 63.1312 shall apply for the purposes of this subpart.

(3) When the term ''Group 2 process vent'' is used in §§ 63.113 through 63.118, the term ''Group 2 continuous process vent,'' and the definition of this term in § 63.1312 shall apply for the purposes of this subpart.

(4) When December 31, 1992 is referred to in § 63.113, apply the date March 29, 1995, for the purposes of this subpart.

* * * * *

(9) When § 63.114(e) specifies that an owner or operator shall submit the information required in § 63.152(b) in order to establish the parameter monitoring range, the owner or operator of an affected source shall comply with the provisions of § 63.1334 for establishing the parameter monitoring level and shall comply with § 63.1335(e)(5) for purposes of reporting information related to establishment of the parameter monitoring level for purposes of this subpart. Further, the term ''level'' shall apply when the term ''range'' is used in §§ 63.114, 63.117, and 63.118.

(10) When reports of process changes are required under § 63.118 (g), (h), (i), or (j), paragraphs (a)(10)(i) through (a)(10)(iv) of this section shall apply for the purposes of this subpart. In addition, for the purposes of this subpart, paragraph (a)(10)(v) of this section applies, and § 63.118(k) does not apply to owners or operators of affected sources.

(i) For the purposes of this subpart, whenever a process change, as defined in § 63.115(e), is made that causes a Group 2 continuous process vent to become a Group 1 continuous process vent, the owner or operator shall submit a report within 180 days after the process change is made or with the next Periodic Report, whichever is later. A description of the process change shall be submitted with the report of the process change, and the owner or operator of the affected source shall comply with the Group 1 provisions in §§ 63.113 through 63.118 in accordance with § 63.1310(i)(2)(ii).

(ii) Whenever a process change, as defined in § 63.115(e), is made that causes a Group 2 continuous process vent with a TRE greater than 4.0 to become a Group 2 continuous process vent with a TRE less than 4.0, the owner or operator shall submit a report within 180 days after the process change is made or with the next Periodic Report, whichever is later. A description of the process change shall be submitted with the report of the process change, and the owner or operator shall comply with the provisions in § 63.113(d) by the dates specified in § 63.481.

(iii) Whenever a process change, as defined in § 63.115(e), is made that causes a Group 2 continuous process vent with a flow rate less than 0.005 standard cubic meter per minute to become a Group 2 continuous process vent with a flow rate of 0.005 standard cubic meter per minute or greater and a TRE index value less than or equal to 4.0, the owner or operator shall submit a report within 180 days after the process change is made or with the next Periodic Report, whichever is later. A description of the process change shall be submitted with the report of the process change, and the owner or operator shall comply with the provisions in § 63.113(d) by the dates specified in § 63.481.

(iv) Whenever a process change, as defined in § 63.115(e), is made that causes a Group 2 continuous process vent with an organic HAP concentration less than 50 parts per million by volume to become a Group 2 continuous process vent with an organic HAP concentration of 50 parts per million by volume or greater and a TRE index value less than or equal to 4.0, the owner or operator shall submit a report within 180 days after the process change is made or with the next Periodic Report, whichever is later. A description of the process change shall be submitted with the report of the process change, and the owner or operator shall comply with the provisions in § 63.113(d) by the dates specified in § 63.481.

(v) The owner or operator is not required to submit a report of a process change if one of the conditions listed in paragraphs (a)(10)(v)(A), (a)(10)(v)(B), (a)(10)(v)(C), or (a)(10)(v)(D) of this section is met.

(A) The process change does not meet the definition of a process change in § 63.115(e);

(B) The vent stream flow rate is recalculated according to § 63.115(e) and the recalculated value is less than 0.005 standard cubic meter per minute;

(C) The organic HAP concentration of the vent stream is recalculated according to § 63.115(e) and the recalculated value is less than 50 parts per million by volume; or

(D) The TRE index value is recalculated according to § 63.115(e) and the recalculated value is greater than 4.0, or for the affected sources producing methyl methacrylate butadiene styrene resin the recalculated value is greater than 6.7.

(11) When the provisions of § 63.116 (c)(3) and (c)(4) specify that Method 18, 40 CFR part 60, appendix A shall be used, Method 18 or Method 25A, 40 CFR part 60, appendix A may be used for the purposes of this subpart. The use of Method 25A, 40 CFR part 60, appendix A shall conform with the requirements in paragraphs (a)(11)(i) and (a)(11)(ii) of this section.

(i) The organic HAP used as the calibration gas for Method 25A, 40 CFR part 60, appendix A shall be the single organic HAP representing the largest percent by volume of the emissions.

(ii) The use of Method 25A, 40 CFR part 60, appendix A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(12) When § 63.118, periodic reporting and recordkeeping requirements, refers to § 63.152(f), the recordkeeping requirements in § 63.1335(d) shall apply for purposes of this subpart.

(13) If a batch process vent or aggregate batch vent stream is combined with a continuous process vent, the owner or operator of the affected source containing the combined vent stream shall comply with paragraph (a)(13)(i); with paragraph (a)(13)(ii) and with paragraph (a)(13) (iii) or (iv); or with paragraph (a)(13)(v) of this section, as appropriate.

(i) If a batch process vent or aggregate batch vent stream is combined with a Group 1 continuous process vent prior to the combined vent stream being routed to a control device, the owner or operator of the affected source containing the combined vent stream shall comply with the requirements in paragraph (a)(13)(i) (A) or (B) of this section.

(A) All requirements for a Group 1 process vent stream in §§ 63.113 through 63.118, except as otherwise provided in this section. As specified in § 63.1333(a)(1), performance tests shall be conducted at maximum representative operating conditions. For the purpose of conducting a performance test on a combined vent stream, maximum representative operating conditions shall be when batch emission episodes are occurring that result in the highest organic HAP emission rate (for the combined vent stream) that is achievable during one of the periods listed in § 63.1333(a)(1)(i) or § 63.1333(a)(1)(ii), without causing any of the situations described in paragraphs (a)(13)(i)(A) (*1*) through (*3*) to occur.

(*1*) Causing damage to equipment.

(*2*) Necessitating that the owner or operator make product that does not meet an existing specification for sale to a customer; or

(*3*) Necessitating that the owner or operator make product in excess of demand.

(B) Comply with the provisions in § 63.1313(b)(1), as allowed under § 63.1313(b).

(ii) If a batch process vent or aggregate batch vent stream is combined with a continuous process vent prior to the combined vent stream being routed to a recovery device, the TRE index value for the combined vent stream shall be calculated at the exit of the last recovery device. The TRE shall be calculated during periods when one or more batch emission episodes are occurring that result in the highest organic HAP emission rate (in the combined vent stream that is being routed to the recovery device) that is achievable during the 6-month period that begins 3 months before and ends 3 months after the TRE calculation, without causing any of the situations described in paragraphs (a)(13)(ii) (A) through (C) to occur.

(A) Causing damage to equipment.

(B) Necessitating that the owner or operator make product that does not meet an existing specification for sale to a customer; or

(C) Necessitating that the owner or operator make product in excess of demand.

(iii) If the combined vent stream described in paragraph (a)(10)(ii) of this section meets the requirements in paragraphs (a)(13)(iii)(A), (B), and (C) of this section, the combined vent stream shall be subject to the requirements for Group 1 process vents in §§ 63.113 through 63.118, except as otherwise provided in this section, as applicable. Performance tests for the combined vent stream shall be conducted at maximum operating conditions, as described in paragraph (a)(13)(i) of this section.

(A) The TRE index value of the combined stream is less than or equal to 1.0;

(B) The flow rate of the combined vent stream is greater than or equal to 0.005 standard cubic meter per minute; and

(C) The total organic HAP concentration is greater than or equal to 50 parts per million by volume for the combined vent stream.

(iv) If the combined vent stream described in paragraph (a)(10)(ii) of this section meets the requirements in paragraph (a)(13)(iv)(A), (B), or (C) of this section, the combined vent stream shall be subject to the requirements for Group 2 process vents in §§ 63.113 through 63.118, except as otherwise provided in this section, as applicable.

(A) The TRE index value of the combined vent stream is greater than 1.0;

(B) The flow rate of the combined vent stream is less than 0.005 standard cubic meter per minute; or

(C) The total organic HAP concentration is less than 50 parts per million by volume for the combined vent stream.

(v) If a batch process vent or aggregate batch vent stream is combined with a Group 2 continuous process vent, the owner or operator shall comply with the requirements in either paragraph (a)(13)(v)(A) or (a)(13)(v)(B) of this section.

(A) The owner or operator shall comply with the requirements in §§ 63.113 through 63.118 for Group 1 process vents; or

(B) The owner or operator shall comply with § 63.1322(e)(2) for batch process vents and aggregate batch vent streams.

(14) If any gas stream that originates outside of an affected source that is subject to this subpart is normally conducted through the same final recovery device as any continuous process vent stream subject to this subpart, the owner or operator of the affected source with the combined vent stream shall comply with all requirements in §§ 63.113 through 63.118 of subpart G of this part, except as otherwise noted in this section, as applicable.

(i) Instead of measuring the vent stream flow rate at the sampling site specified in § 63.115(b)(1), the sampling site for vent stream flow rate shall be prior to the final recovery device and prior to the point at which the gas stream that is not controlled under this subpart is introduced into the combined vent stream.

(ii) Instead of measuring total organic HAP or TOC concentrations at the sampling site specified in § 63.115(c)(1), the sampling site for total organic HAP or TOC concentration shall be prior to the final recovery device and prior to the point at which the gas stream that is not controlled under this subpart is introduced into the combined vent stream.

(iii) The efficiency of the final recovery device (determined according to paragraph (a)(14)(iv) of this section) shall be applied to the total organic HAP or TOC concentration measured at the sampling site described in paragraph (a)(14)(ii) of this section to determine the exit concentration. This exit concentration of total organic HAP or TOC shall then be used to perform the calculations outlined in § 63.115(d)(2)(iii) and § 63.115(d)(2)(iv), for the combined vent stream exiting the final recovery device.

(iv) The efficiency of the final recovery device is determined by measuring the total organic HAP or TOC concentration using Method 18 or 25A, 40 CFR part 60, appendix A, at the inlet to the final recovery device after the introduction of any gas stream that is not controlled under this subpart, and at the outlet of the final recovery device.

(15) When § 63.115(c)(3)(ii)(B) and (d)(2)(iv) and § 63.116(c)(3)(ii)(B) and (c)(4)(ii)(C) refer to Table 2 of subpart F of this part, the owner or operator is only required to consider organic HAP listed on Table 6 of this subpart for purposes of this subpart.

(16) The compliance date for continuous process vents subject to the provisions of this section is specified in § 63.1311.

(17) In § 63.116(a), instead of the reference to § 63.11(b), the requirements in § 63.1333(e) shall apply.

* * * * *

(b) Owners or operators of existing affected sources producing MBS shall comply with either paragraph (b)(1) or (b)(2) of this section.

(1) * * *

(ii) When complying with this paragraph (b), and the term ''TRE of 4.0'' is used, or related terms indicating a TRE index value of 4.0, referred to in

§§ 63.113 through 63.118, are used, the term ''TRE of 6.7'' shall apply instead, for the purposes of this subpart. The TRE range of 3.7 to 6.7 for continuous process vents at existing affected sources producing MBS corresponds to the TRE range of 1.0 to 4.0 for other continuous process vents, as it applies to monitoring, recordkeeping, and reporting.

* * * * *

(c) Owners or operators of new affected sources producing SAN using a batch process shall comply with the applicable requirements in § 63.1321.

(d) Affected sources producing PET or polystyrene using a continuous process are not subject to the provisions of this section and instead are subject to the emissions control provisions of § 63.1316, the monitoring provisions of § 63.1317, the testing and compliance demonstration provisions of § 63.1318, the recordkeeping provisions of § 63.1319, and the reporting provisions of § 63.1320. However, in some instances, as specified in § 63.1316, select continuous process vents present at affected sources producing PET or polystyrene using a continuous process are subject to the provisions of this section.

* * * * *

35. Section 63.1316 is amended by revising the section title and paragraphs (a), (b), (c) introductory text, (c)(1) introductory text, (c)(1)(i), (c)(1)(ii), (c)(1)(iii)(A), (c)(1)(iii)(C), and (c)(3), to read as follows:

§ 63.1316 PET and polystyrene affected sources—emissions control provisions.

(a) The owner or operator of an affected source producing PET using a continuous process shall comply with paragraph (b) of this section. The owner or operator of an affected source producing polystyrene using a continuous process shall comply with paragraph (c) of this section. As specified in paragraphs (b) and (c) of this section, owners or operators shall comply with § 63.1315 for certain continuous process vents and with § 63.1321 for all batch process vents. The owner or operator of an affected source producing PET using a batch process or producing polystyrene using a batch process shall comply with § 63.1315 for continuous process vents and with § 63.1321 for batch process vents, instead of the provisions of §§ 63.1316 through 63.1320.

(b) The owner or operator of an affected source producing PET using a continuous process shall comply with the requirements specified in paragraphs (b)(1) or (b)(2) of this section, as appropriate, and are not required to comply with the requirements specified in 40 CFR part 60, subpart DDD. Compliance can be based on either organic HAP or TOC.

(1) The owner or operator of an affected source producing PET using a continuous dimethyl terephthalate process shall comply with paragraphs (b)(1)(i) through (b)(1)(iv) of this section.

(i) The owner or operator of an existing affected source with organic HAP emissions greater than 0.12 kg organic HAP per Mg of product from continuous process vents in the collection of material recovery sections (i.e., methanol recovery) within the affected source shall comply with either paragraph (b)(1)(i)(A) or (b)(1)(i)(B) of this section. Emissions from continuous process vents in the collection of material recovery sections within the affected source shall be determined by the procedures specified in § 63.1318(b). The owner or operator of a new affected source shall comply with either paragraph (b)(1)(i)(A) or (b)(1)(i)(B) of this section.

(A) Organic HAP emissions from all continuous process vents in each individual material recovery section shall, as a whole, be no greater than 0.018 kg organic HAP per Mg of product from the associated TPPU(s); or alternatively, organic HAP emissions from all continuous process vents in the collection of material recovery sections within the affected source shall, as a whole, be no greater than 0.018 kg organic HAP per Mg product from all associated TPPU(s); or

(B) As specified in § 63.1318(d), the owner or operator shall maintain the daily average outlet gas stream temperature from each final condenser in a material recovery section at a temperature of +3°C (+37°F) or less (i.e., colder).

(ii) Organic HAP emissions from all continuous process vents in each individual polymerization reaction section (including emissions from any equipment used to further recover ethylene glycol, but excluding emissions from process contact cooling towers) shall, as a whole, be no greater than 0.02 kg organic HAP per Mg of product from the associated TPPU(s); or alternatively, organic HAP emissions from all continuous process vents in the collection of polymerization reaction sections within the affected source shall, as a whole, be no greater than 0.02 kg organic HAP per Mg product from all associated TPPU(s).

(iii) Continuous process vents not included in a material recovery section, as specified in paragraph (b)(1)(i) of this section, and not included in a polymerization reaction section, as specified in paragraph (b)(1)(ii) of this section, shall comply with § 63.1315.

(iv) Batch process vents shall comply with § 63.1321.

(2) The owner or operator of an affected source producing PET using a continuous terephthalic acid process shall comply with paragraphs (b)(2)(i) through (b)(2)(iv) of this section.

(i) Organic HAP emissions from all continuous process vents associated with the esterification vessels in each individual raw materials preparation section shall, as a whole, be no greater than 0.04 kg organic HAP per Mg of product from the associated TPPU(s); or alternatively, organic HAP emissions from all continuous process vents associated with the esterification vessels in the collection of raw material preparation sections within the affected source shall, as a whole, be no greater than 0.04 kg organic HAP per Mg of product from all associated TPPU(s). Other continuous process vents (i.e., those not associated with the esterification vessels) in the collection of raw materials preparation sections within the affected source shall comply with § 63.1315.

(ii) Organic HAP emissions from all continuous process vents in each individual polymerization reaction section (including emissions from any equipment used to further recover ethylene glycol, but excluding emissions from process contact cooling towers) shall, as a whole, be no greater than 0.02 kg organic HAP per Mg of product from the associated TPPU(s); or alternatively, organic HAP emissions from all continuous process vents in the collection of polymerization reaction sections within the affected source shall, as a whole, be no greater than 0.02 kg organic HAP per Mg of product from all associated TPPU(s).

(iii) Continuous process vents not included in a raw materials preparation section, as specified in paragraph (b)(2)(i) of this section, and not included in a polymerization reaction section, as specified in paragraph (b)(2)(ii) of this section, shall comply with § 63.1315.

(iv) Batch process vents shall comply with § 63.1321.

(c) The owner or operator of an affected source producing polystyrene resin using a continuous process shall comply with the requirements specified in paragraphs (c)(1) through (c)(3) of this section, as appropriate, instead of the requirements specified in 40 CFR part 60, subpart DDD. Compliance can be based on either organic HAP or TOC.

(1) Limit organic HAP emissions from continuous process vents in the collection of material recovery sections within the affected source by complying

with either paragraph (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this section.

(i) Organic HAP emissions from all continuous process vents in each individual material recovery section shall, as a whole, be no greater than 0.0036 kg organic HAP per Mg of product from the associated TPPU(s); or alternatively, organic HAP emissions from all continuous process vents in the collection of material recovery sections within the affected source shall, as a whole, be no greater than 0.0036 kg organic HAP per Mg of product from all associated TPPU(s);

(ii) As specified in § 63.1318(d), the owner or operator shall maintain the daily average outlet gas stream temperature from each final condenser in a material recovery section at a temperature of −25°C (−13°F) or less (i.e., colder); or

(iii) * * *

(A) Reduce the emissions in a combustion device to achieve 98 weight percent reduction or to achieve a concentration of 20 parts per million by volume (ppmv) on a dry basis, whichever is less stringent. If an owner or operator elects to comply with the 20 ppmv standard, the concentration shall include a correction to 3 percent oxygen only when supplemental combustion air is used to combust the emissions;

* * * * *

(C) Combust the emissions in a flare that complies with the requirements of § 63.1333(e).

* * * * *

(3) Batch process vents shall comply with § 63.1321.

36. Section 63.1317 is revised (including the section title) to read as follows:

§ 63.1317 PET and polystyrene affected sources—monitoring provisions.

Continuous process vents using a control or recovery device to comply with § 63.1316 shall comply with the applicable monitoring provisions specified for continuous process vents in § 63.1315(a), except that references to group determinations (i.e., total resource effectiveness) do not apply and owners or operators are not required to comply with § 63.113.

37. Section 63.1318 is amended by revising the section title and paragraphs (a), (b) introductory text, (b)(1)(i) introductory text, (c), and (d), to read as follows:

§ 63.1318 PET and polystyrene affected sources—testing and compliance demonstration provisions.

(a) Except as specified in paragraphs (b) through (d) of this section, continuous process vents using a control or recovery device to comply with § 63.1316 shall comply with the applicable testing and compliance provisions for continuous process vents specified in § 63.1315, except that, for the purposes of this paragraph (a), references to group determinations (i.e., total resource effectiveness) do not apply and owners or operators are not required to comply with § 63.113.

(b) *PET affected sources using a dimethyl terephthalate process—applicability determination procedure.* Owners or operators shall calculate organic HAP emissions from the collection of material recovery sections at an existing affected source producing PET using a continuous dimethyl terephthalate process to determine whether § 63.1316(b)(1)(i) is applicable using the procedures specified in either paragraph (b)(1) or (b)(2) of this section.

(1) * * *

(i) The mass emission rate for each continuous process vent, E_i, shall be determined according to the procedures specified in § 63.116(c)(4). The sampling site for determining whether § 63.1316(b)(1)(i) is applicable shall be at the outlet of the last recovery or control device. When the provisions of § 63.116(c)(4) specify that Method 18, 40 CFR part 60, appendix A shall be used, Method 18 or Method 25A, 40 CFR part 60, appendix A may be used for the purposes of this subpart. The use of Method 25A, 40 CFR part 60, appendix A shall comply with paragraphs (b)(1)(i)(A) and (b)(1)(i)(B) of this section.

* * * * *

(c) *Compliance with mass emissions per mass product standards.* Owners or operators complying with § 63.1316(b)(1)(i)(A), (b)(1)(ii), (b)(2)(i), (b)(2)(ii), and (c)(1)(i) shall demonstrate compliance with the mass emissions per mass product requirements using the procedures specified in paragraph (b)(1) of this section.

(d) *Compliance with temperature limits for final condensers.* Owners or operators complying with § 63.1316(b)(1)(i)(B) or § 63.1316(c)(1)(ii) shall demonstrate continuous compliance based on an average exit temperature determined for each operating day. Calculation of the daily average exit temperature shall follow the provisions of § 63.1335(d)(3). The provisions of § 63.1334 (f) and (g) shall apply for the purposes of determining whether or not an owner or operator is to be deemed out of compliance for a given operating day.

38. Section 63.1319 is amended by revising the section title and paragraphs (a), (b) introductory text, (b)(2), and (c), to read as follows:

§ 63.1319 PET and polystyrene affected sources—recordkeeping provisions.

(a) Except as specified in paragraphs (b) and (c) of this section, owners or operators using a control or recovery device to comply with § 63.1316 shall comply with the applicable recordkeeping provisions specified in § 63.1315, except that, for the purposes of this paragraph (a), references to group determinations (i.e., total resource effectiveness) do not apply, and owners or operators are not required to comply with § 63.113.

(b) *Records demonstrating compliance with the applicability determination procedure for PET affected sources using a dimethyl terephthalate process.* Owners or operators complying with § 63.1316(b)(1)(i) by demonstrating that mass emissions per mass product are less than or equal to the level specified in § 63.1316(b)(1)(i) (i.e., 0.12 kg organic HAP per Mg of product) shall keep the following records.

* * * * *

(2) Records of any change in process operation that increases the mass emissions per mass product.

(c) *Records demonstrating compliance with temperature limits for final condensers.* Owners or operators of continuous process vents complying with § 63.1316(b)(1)(i)(B) or § 63.1316(c)(1)(ii) shall keep records of the daily averages required by § 63.1318, per the recordkeeping provisions specified in § 63.1335(d).

39. Section 63.1320 is amended by revising the section title and paragraphs (a) and (b); and removing and reserving paragraph (c), to read as follows:

§ 63.1320 PET and polystyrene affected sources—reporting provisions.

(a) Except as specified in paragraph (b) of this section, owners and operators using a control or recovery device to comply with § 63.1316 shall comply with the applicable reporting provisions specified in § 63.1315, except that, for the purposes of this paragraph (a), references to group determinations (i.e., total resource effectiveness) do not apply, and owners or operators are not required to comply with § 63.113.

(b) *Reporting for PET affected sources using a dimethyl terephthalate process.* Owners or operators complying with § 63.1316 by demonstrating that mass emissions per mass product are less than or equal to the level specified in § 63.1316(b)(1)(i) (i.e., 0.12 kg organic HAP per Mg of product) shall comply with paragraphs (b)(1) through (b)(3) of this section.

(1) Include the information specified in § 63.1319(b)(2) in each Periodic

Report, required by § 63.1335(e)(6), as appropriate.

(2) Include the information specified in § 63.1319(b)(1) in the Notification of Compliance Status, required by § 63.1335(e)(5).

(3) Whenever a process change, as defined in § 63.115(e), is made that causes emissions from continuous process vents in the collection of material recovery sections (i.e., methanol recovery) within the affected source to be greater than 0.12 kg organic HAP per Mg of product, the owner or operator shall submit a report within 180 days after the process change is made or the information regarding the process change is known to the owner or operator. This report may be included in the next Periodic Report as specified in § 63.1335(e)(6)(iii)(D)(*2*). The report shall include the information specified in § 63.1319(b)(1) and a description of the process change.

(c) [Reserved.]

* * * * *

40. Section 63.1321 is amended by revising paragraphs (a) and (c), to read as follows:

§ 63.1321 Batch process vents provisions.

(a) *Batch process vents.* Except as specified in paragraphs (b) through (d) of this section, owners and operators of new and existing affected sources with batch process vents shall comply with the requirements in §§ 63.1322 through 63.1327. The batch process vent group status shall be determined in accordance with § 63.1323. Owners or operators of batch process vents classified as Group 1 shall comply with the reference control technology requirements for Group 1 batch process vents in § 63.1322, the monitoring requirements in § 63.1324, the performance test methods and procedures to determine compliance in § 63.1325, the recordkeeping requirements in § 63.1326, and the reporting requirements in § 63.1327. Owners or operators of all Group 2 batch process vents shall comply with the applicable reference control technology requirements in § 63.1322, the applicable recordkeeping requirements in § 63.1326, and the applicable reporting requirements in § 63.1327.

* * * * *

(c) *Aggregate batch vent streams.* Aggregate batch vent streams, as defined in § 63.1312, are subject to the control requirements specified in § 63.1322(b), as well as the monitoring, testing, recordkeeping, and reporting requirements specified in §§ 63.1324 through 63.1327 for aggregate batch vent streams.

* * * * *

41. Section 63.1322 is amended by revising paragraphs (a) introductory text, (a)(1)(i), (b) introductory text, (b)(1)(i), (b)(2), (c)(1), (c)(2), (e), (f), and (g); and adding paragraph (h), to read as follows:

§ 63.1322 Batch process vents—reference control technology.

(a) *Batch process vents.* The owner or operator of a Group 1 batch process vent, as determined using the procedures in § 63.1323, shall comply with the requirements of either paragraph (a)(1) or (a)(2) of this section, except as provided for in paragraph (a)(3) of this section. Compliance may be based on either organic HAP or TOC.

(1) * * *

(i) The owner or operator shall comply with the requirements of § 63.1333(e) for the flare.

* * * * *

(b) *Aggregate batch vent streams.* The owner or operator of an aggregate batch vent stream that contains one or more Group 1 batch process vents shall comply with the requirements of either paragraph (b)(1) or (b)(2) of this section, except as provided for in paragraph (b)(3) of this section. Compliance may be based on either organic HAP or TOC.

(1) * * *

(i) The owner or operator shall comply with the requirements of § 63.1333(e) for the flare.

* * * * *

(2) For each aggregate batch vent stream, reduce organic HAP emissions by 90 weight percent or to a concentration of 20 parts per million by volume, whichever is less stringent, on a continuous basis using a control device. For combustion devices, the emission reduction or concentration shall be calculated on a dry basis, corrected to 3 percent oxygen.

* * * * *

(c) * * *

(1) If a combustion device is used to comply with paragraph (a)(2), (a)(3), (b)(2), or (b)(3) of this section for a halogenated batch process vent, halogenated aggregate batch vent stream, or halogenated continuous process vent, said emissions exiting the combustion device shall be ducted to a halogen reduction device that reduces overall emissions of hydrogen halides and halogens by at least 99 percent before discharge to the atmosphere.

(2) A halogen reduction device may be used to reduce the halogen atom mass emission rate of said emissions to less than 3,750 kg/yr for batch process vents or aggregate batch vent streams and to less than 0.45 kilograms per hour for continuous process vents prior to venting to any combustion control device, and thus make the batch process vent, aggregate batch vent stream, or continuous process vent nonhalogenated. The nonhalogenated batch process vent, aggregate batch vent stream, or continuous process vent shall then comply with the requirements of either paragraph (a) or (b) of this section, as appropriate.

* * * * *

(e) *Combination of batch process vents or aggregate batch vent streams with continuous process vents.* If a batch process vent or aggregate batch vent stream is combined with a continuous process vent, the owner or operator shall determine whether the combined vent stream is subject to the provisions of §§ 63.1321 through 63.1327 according to paragraphs (e)(1) and (e)(2) of this section.

(1) A batch process vent or aggregate batch vent stream combined with a continuous process vent is not subject to the provisions of §§ 63.1321 through 63.1327, if the requirements in paragraph (e)(1)(i) and in either paragraph (e)(1)(ii) or (e)(1)(iii) are met.

(i) The only emissions to the atmosphere from the batch process vent or aggregate batch vent stream prior to being combined with the continuous process vent are from equipment subject to § 63.1331.

(ii) The batch process vent or aggregate batch vent stream is combined with a Group 1 continuous process vent prior to the combined vent stream being routed to a control device. In this paragraph (e)(1)(ii), the definition of control device as it relates to continuous process vents shall be used. Furthermore, the combined vent stream discussed in this paragraph (e)(1)(ii) shall be subject to § 63.1315(a)(13)(i).

(iii) The batch process vent or aggregate batch vent stream is combined with a continuous process vent prior to being routed to a recovery device. In this paragraph (e)(1)(iii), the definition of recovery device as it relates to continuous process vents shall be used. Furthermore, the combined vent stream discussed in this paragraph (e)(1)(iii) shall be subject to § 63.1315(a)(13)(ii).

(2) If the batch process vent or aggregate batch vent stream is combined with a Group 2 continuous process vent, the group status of the batch process vent shall be determined prior to its combination with the Group 2 continuous process vent, in accordance with § 63.1323, and the combined vent stream shall be subject to the

requirements for aggregate batch vent streams in §§ 63.1321 through 63.1327.

(f) *Group 2 batch process vents with annual emissions greater than or equal to the level specified in § 63.1323(d).* The owner or operator of a Group 2 batch process vent with annual emissions greater than or equal to the level specified in § 63.1323(d) shall comply with the provisions of paragraph (f)(1), (f)(2), or (h) of this section.

(1) The owner or operator of an affected source shall comply with the requirements in paragraphs (f)(1)(i) through (f)(1)(iv) of this section.

(i) The owner or operator shall establish a batch mass input limitation that ensures the Group 2 batch process vent does not become a Group 1 batch process vent.

(ii) Over the course of the affected source's ''year,'' as reported in the Notification of Compliance Status in accordance with § 63.1335(e)(5)(iv), the owner or operator shall not charge a mass of HAP or material to the batch unit operation that is greater than the level established as the batch mass input limitation.

(iii)The owner or operator shall comply with the recordkeeping requirements in § 63.1326(d)(2), and the reporting requirements in § 63.1327(a)(3), (b), and (c).

(iv) The owner or operator shall comply with § 63.1323(i) when process changes are made.

(2) Comply with the requirements of this subpart for Group 1 batch process vents.

(g) *Group 2 batch process vents with annual emissions less than the level specified in § 63.1323(d).* The owner or operator of a Group 2 batch process vent with annual emissions less than the level specified in § 63.1323(d) shall comply with paragraphs (g)(1), (g)(2), (g)(3), or (g)(4) of this section.

(1) The owner or operator of the affected source shall comply with the requirements in paragraphs (g)(1)(i) through (g)(1)(iv) of this section.

(i) The owner or operator shall establish a batch mass input limitation that ensures emissions do not exceed the level specified in § 63.1323(d).

(ii) Over the course of the affected source's ''year,'' as reported in the Notification of Compliance Status in accordance with § 63.1335(e)(5)(iv), the owner or operator shall not charge a mass of HAP or material to the batch unit operation that is greater than the level established as the batch mass input limitation.

(iii) The owner or operator shall comply with the recordkeeping requirements in § 63.1326(d)(1), and the reporting requirements in § 63.1327(a)(2), (b), and (c).

(iv) The owner or operator of the affected source shall comply with § 63.1323(i) when process changes are made.

(2) Comply with the requirements of paragraph (f)(1) of this section;

(3) Comply with the requirements of paragraph (f)(2) of this section; or

(4) Comply with the requirements of paragraph (h) of this section.

(h) Owners or operators of Group 2 batch process vents are not required to establish a batch mass input limitation if the batch process vent is Group 2 at the conditions specified in paragraphs (h)(1) and (h)(2) of this section and if the owner or operator complies with the recordkeeping provisions in §§ 63.1326(a)(1) through (3), 63.1326(a)(9), and 63.1326(a)(4) through (6) as applicable, and the reporting requirements in § 63.1327(a)(5), (a)(6), and (b).

(1) Emissions for the single highest-HAP recipe (considering all products that are produced in the batch unit operation) are used in the group determination; and

(2) The group determination assumes that the batch unit operation is operating at the maximum design capacity of the TPPU for 12 months.

42. Section 63.1323 is amended by:

a. Revising paragraphs (a)(1), (b) introductory text, (b)(1), (b)(2), (b)(4)(i)(A) through (b)(4)(i)(C), (b)(4)(ii)(B)(*1*), (b)(5) introductory text, (b)(5)(ii), (b)(5)(iii) introductory text, (b)(5)(iv), (b)(5)(v) introductory text, (b)(5)(v)(A), (b)(6), (d), (e) introductory text, (e)(1) introductory text, (e)(1)(i), (e)(1)(iii), (e)(2), (e)(3), (g), (h)(1)(iii), (h)(2), (i), (j) introductory text and (j)(3); and

b. Adding paragraph (b)(9), to read as follows:

§ 63.1323 Batch process vents—methods and procedures for group determination.

(a) * * *

(1) The procedures specified in paragraphs (b) through (g) of this section shall be followed to determine the group status of each batch process vent. This determination shall be made in accordance with either paragraph (a)(1)(i) or (a)(1)(ii) of this section.

(i) An owner or operator may choose to determine the group status of a batch process vent based on the expected mix of products. For each product, emission characteristics of the single highest-HAP recipe, as defined in paragraph (a)(1)(iii) of this section, for that product shall be used in the procedures in paragraphs (b) through (i) of this section.

(ii) An owner or operator may choose to determine the group status of a batch process vent based on annualized production of the single highest-HAP recipe, as defined in paragraph (a)(1)(iii) of this section, considering all products produced or processed in the batch unit operation. The annualized production of the highest-HAP recipe shall be based exclusively on the production of the single highest-HAP recipe of all products produced or processed in the batch unit operation for a 12 month period. The production level used may be the actual production rate. It is not necessary to assume a maximum production rate (i.e., 8,760 hours per year at maximum design production).

(iii) The single highest-HAP recipe for a product means the recipe of the product with the highest total mass of HAP charged to the reactor during the production of a single batch of product.

* * * * *

(b) *Determination of annual emissions.* The owner or operator shall calculate annual uncontrolled TOC or organic HAP emissions for each batch process vent using the methods described in paragraphs (b)(1) through (b)(8) of this section. To estimate emissions from a batch emissions episode, owners or operators may use either the emissions estimation equations in paragraphs (b)(1) through (b)(4) of this section, or direct measurement as specified in paragraph (b)(5) of this section. Engineering assessment may be used to estimate emissions from a batch emission episode only under the conditions described in paragraph (b)(6) of this section. In using the emissions estimation equations in paragraphs (b)(1) through (b)(4) of this section, individual component vapor pressure and molecular weight may be obtained from standard references. Methods to determine individual HAP partial pressures in multicomponent systems are described in paragraph (b)(9) of this section. Other variables in the emissions estimation equations may be obtained through direct measurement, as defined in paragraph (b)(5) of this section, through engineering assessment, as defined in paragraph (b)(6)(ii) of this section, by process knowledge, or by any other appropriate means. Assumptions used in determining these variables must be documented. Once emissions for the batch emission episode have been determined using either the emissions estimation equations, direct measurement, or engineering assessment, emissions from a batch cycle shall be calculated in accordance with paragraph (b)(7) of this section, and annual emissions from the batch process vent shall be calculated in

accordance with paragraph (b)(8) of this section.

(1) TOC or organic HAP emissions from the purging of an empty vessel shall be calculated using Equation 2 of this subpart. Equation 2 of this subpart does not take into account evaporation of any residual liquid in the vessel.

where:

$E_{episode}$ = Emissions, kg/episode.

V_{ves} = Volume of vessel, m^3.

$$E_{episode} = \frac{(V_{ves})(P)(MW_{wavg})}{RT}\left(1 - 0.37^{m}\right) \qquad \text{[Eq. 2]}$$

P = TOC or total organic HAP partial pressure, kPa.

MW_{wavg} = Weighted average molecular weight of TOC or organic HAP in vapor, determined in accordance with paragraph (b)(4)(i)(D) of this section, kg/kmol.

R = Ideal gas constant, 8.314 m^3•kPa/kmol•K.

T = Temperature of vessel vapor space, K.

m = Number of volumes of purge gas used.

(2) TOC or organic HAP emissions from the purging of a filled vessel shall be calculated using Equation 3 of this subpart.

Where:

$$E_{episode} = \frac{(y)(V_{dr})(P^2)(MW_{wavg})}{RT(P - \sum_{i=1}^{n} P_i x_i}(T_m) \qquad \text{[Eq. 3]}$$

$E_{episode}$ = Emissions, kg/episode.

y = Saturated mole fraction of all TOC or organic HAP in vapor phase.

V_{dr} = Volumetric gas displacement rate, m^3/min.

P = Pressure in vessel vapor space, kPa.

MW_{wavg} = Weighted average molecular weight of TOC or organic HAP in vapor, determined in accordance with paragraph (b)(4)(i)(D) of this section, kg/kmol.

R = Ideal gas constant, 8.314 m^3•kPa/kmol•K.

T = Temperature of vessel vapor space, K.

P_i = Vapor pressure of TOC or individual organic HAP i, kPa.

x_i = Mole fraction of TOC or organic HAP i in the liquid.

$$E_{episode} = \left[\frac{\dfrac{\sum_{i=1}^{n}(P_i)_{T1}}{101.325 - \sum_{i=1}^{n}(P_i)_{T1}} + \dfrac{\sum_{i=1}^{n}(P_i)_{T2}}{101.325 - \sum_{i=1}^{n}(P_i)_{T2}}}{2}\right] * (\Delta\eta)\left(MW_{wavg,\,T1} + MW_{wavg,\,T2}\right)/2 \qquad \text{[Eq. 5]}$$

n = Number of organic HAP in stream. Note: Summation not applicable if TOC emissions are being estimated.

T_m = Minutes/episode.

* * * * *

(4) * * *

(i) * * *

(A) Emissions caused by heating of a vessel shall be calculated using Equation 5 of this subpart. The assumptions made for this calculation are atmospheric pressure of 760 millimeters of mercury (mm Hg) and the displaced gas is always saturated with volatile organic compounds (VOC) vapor in equilibrium with the liquid mixture.

Where:

$E_{episode}$ = Emissions, kg/episode.

$(P_i)T1$, $(P_i)T^2$ = Partial pressure (kPa) of TOC or each organic HAP i in the vessel headspace at initial (T1) and final (T2) temperature.

n = Number of organic HAP in stream. Note: Summation not applicable if TOC emissions are being estimated.

Δη = Number of kilogram-moles (kg-moles) of gas displaced, determined in accordance with paragraph (b)(4)(i)(B) of this section.

101.325 = Constant, kPa.

$(MW_{WAVG,T1})$, $(MW_{WAVG,}T2)$ = Weighted average molecular weight of TOC or total organic HAP in the displaced gas stream, determined in accordance with paragraph (b)(4)(i)(D) of this section, kg/kmol.

(B) The moles of gas displaced, Δη, is calculated using Equation 6 of this subpart.

where:

Δη = Number of kg-moles of gas displaced.

V_{fs} = Volume of free space in the vessel, m_3.

R = Ideal gas constant, 8.314 m^3•kPa/kmol•K.

$$\Delta\eta = \frac{V_{fs}}{R}\left[\left(\frac{Pa_1}{T_1}\right) - \left(\frac{Pa_2}{T_2}\right)\right] \qquad \text{[Eq. 6]}$$

Pa_1 = Initial noncondensible gas partial pressure in the vessel, kPa.

Pa_2 = Final noncondensible gas partial pressure, kPa.

T_1 = Initial temperature of vessel, K.

T_2 = Final temperature of vessel, K.

(C) The initial and final pressure of the noncondensible gas in the vessel shall be calculated using Equation 7 of this subpart.

where:

Pa = Initial or final partial pressure of noncondensible gas in the vessel headspace, kPa.

101.325 = Constant, kPa.

$(P_i)T$ = Partial pressure of TOC or each organic HAP i in the vessel headspace, kPa, at the initial or final temperature (T1 or T2).

n = Number of organic HAP in stream. Note: Summation not applicable if TOC emissions are being estimated.

* * * * *

(ii) * * *

(B) * * *

(*1*) If the final temperature of the heatup is at or lower than 5 K below the boiling point, the final temperature for the last increment shall be the final temperature for the heatup, even if the last increment is less than 5 K.

* * * * *

(5) The owner or operator may estimate annual emissions for a batch emission episode by direct measurement. If direct measurement is used, the owner or operator shall either perform a test for the duration of a representative batch emission episode or perform a test during only those periods of the batch emission episode for which the emission rate for the entire episode can be determined or for which the emissions are greater than the average emission rate of the batch emission episode. The owner or operator choosing either of these options shall develop an emission profile for the entire batch emission episode, based on either process knowledge or test data collected, to demonstrate that test periods are representative. Examples of information that could constitute process knowledge include calculations based on material balances and process stoichiometry. Previous test results may be used provided the results are still relevant to the current batch process vent conditions. Performance tests shall follow the procedures specified in paragraphs (b)(5)(i) through (b)(5)(iii) of this section. The procedures in either paragraph (b)(5)(iv) or (b)(5)(v) of this section shall be used to calculate the emissions per batch emission episode.

* * * * *

(ii) Annual average batch vent flow rate shall be determined as specified in paragraph (e) of this section.

(iii) Method 18 or Method 25A, 40 CFR part 60, appendix A, shall be used to determine the concentration of TOC or organic HAP, as appropriate. Alternatively, any other method or data that has been validated according to the applicable procedures in Method 301 of appendix A of this part may be used. The use of Method 25A, 40 CFR part 60, appendix A shall conform with the requirements in paragraphs (b)(5)(iii)(A) and (b)(5)(iii)(B) of this section.

* * * * *

(iv) If an integrated sample is taken over the entire batch emission episode to determine the average batch vent concentration of TOC or total organic HAP, emissions shall be calculated using Equation 9 of this subpart.

where:

$$E_{episode} = K\left[\sum_{j=1}^{n}\left(C_j\right)\left(M_j\right)\right]AFR\left(T_h\right) \qquad \text{[Eq. 9]}$$

$E_{episode}$ = Emissions, kg/episode.

K = Constant, 2.494×10^{-6} $(ppmv)^{-1}$ (gm-mole/scm) (kg/gm) (min/hr), where standard temperature is 20 °C.

C_j = Average batch vent concentration of TOC or sample organic HAP component j of the gas stream, dry basis, ppmv.

M_j = Molecular weight of TOC or sample organic HAP component j of the gas stream, gm/gm-mole.

AFR = Average batch vent flow rate of gas stream, dry basis, scmm.

T_h = Hours/episode

n = Number of organic HAP in stream. Note: Summation not applicable if TOC emissions are being estimated using a TOC concentration measured using Method 25A, 40 CFR part 60, appendix A.

$$E_{point} = K\left[\sum_{j=1}^{n} C_j M_j\right]FR \qquad \text{[Eq. 10]}$$

(v) If grab samples are taken to determine the average batch vent concentration of TOC or total organic HAP, emissions shall be calculated according to paragraphs (b)(5)(v)(A) and (b)(5)(v)(B) of this section.

(A) For each measurement point, the emission rate shall be calculated using Equation 10 of this subpart.

Where:

E_{point} = Emission rate for individual measurement point, kg/hr.

K = Constant, 2.494×10^{-6} $(ppmv)^{-1}$ (gm-mole/scm) (kg/gm) (min/hr), where standard temperature is 20 °C.

C_j = Concentration of TOC or sample organic HAP component j of the gas stream, dry basis, ppmv.

M_j = Molecular weight of TOC or sample organic HAP component j of the gas stream, gm/gm-mole.

FR = Flow rate of gas stream for the measurement point, dry basis, scmm.

n = Number of organic HAP in stream. Note: Summation not applicable if TOC emissions are being estimated using a TOC concentration measured using Method 25A, 40 CFR part 60, appendix A.

* * * * *

(6) Engineering assessment may be used to estimate emissions from a batch emission episode, if the criteria in paragraph (b)(6)(i) are met. Data or other information used to demonstrate that the criteria in paragraph (b)(6)(i) of this section have been met shall be reported as specified in paragraph (b)(6)(iii) of this section. Paragraph (b)(6)(ii) of this section defines engineering assessment, for the purposes of estimating emissions from a batch emissions episode. All data, assumptions, and procedures used in an engineering assessment shall be documented.

(i) If the criteria specified in paragraph (b)(6)(i)(A), (B), or (C) are met for a specific batch emission episode, the owner or operator may use engineering assessment, as described in paragraph (b)(6)(ii) of this section, to estimate emissions from that batch emission episode, and the owner or operator is not required to use the emissions estimation equations described in paragraphs (b)(1) through (b)(4) of this section to estimate emissions from that batch emission episode.

(A) Previous test data, where the measurement of organic HAP or TOC emissions was an outcome of the test, show a greater than 20 percent discrepancy between the test value and the value estimated using the applicable equations in paragraphs (b)(1) through (b)(4) of this section. Paragraphs (b)(6)(i)(A)(*1*) and (*2*) of this section describe test data that will be acceptable under this paragraph (b)(6)(i)(A).

(*1*) Test data for the batch emission episode obtained during production of the product for which the demonstration is being made.

(*2*) Test data obtained for a batch emission episode from another process train, where the test data were obtained during production of the product for which the demonstration is being made. Test data from another process train may be used only if the owner or operator can demonstrate that the data are representative of the batch emission episode for which the demonstration is being made, taking into account the nature, size, operating conditions, production rate, and sequence of process steps (e.g., reaction, distillation, etc.) of the equipment in the other process train.

(B) Previous test data obtained during the production of the product for which the demonstration is being made, for the batch emission episode with the highest organic HAP emissions on a mass basis, show a greater than 20 percent discrepancy between the test value and the value estimated using the applicable equations in paragraphs (b)(1) through (b)(4) of this section. If the criteria in this paragraph (b)(6)(i)(B) are met, then engineering assessment may be used for all batch emission episodes associated with that batch cycle for the batch unit operation.

(C) The owner or operator has requested and been granted approval to use engineering assessment to estimate emissions from a batch emissions episode. The request to use engineering assessment to estimate emissions from a batch emissions episode shall contain sufficient information and data to demonstrate to the Administrator that engineering assessment is an accurate means of estimating emissions for that particular batch emissions episode. The request to use engineering assessment to estimate emissions for a batch emissions episode shall be submitted in the Precompliance Report required under § 63.506(e)(3).

(ii) Engineering assessment includes, but is not limited to, the following:

(A) Previous test results, provided the tests are representative of current operating practices;

(B) Bench-scale or pilot-scale test data obtained under conditions representative of current process operating conditions;

(C) Flow rate, TOC emission rate, or organic HAP emission rate specified or implied within a permit limit applicable to the batch process vent; and

(D) Design analysis based on accepted chemical engineering principles, measurable process parameters, or physical or chemical laws or properties. Examples of analytical methods include, but are not limited to:

(*1*) Use of material balances;

(*2*) Estimation of flow rate based on physical equipment design such as pump or blower capacities;

(*3*) Estimation of TOC or organic HAP concentrations based on saturation conditions; and

(*4*) Estimation of TOC or organic HAP concentrations based on grab samples of the liquid or vapor.

(iii) Data or other information used to demonstrate that the criteria in paragraph (b)(6)(i) of this section have been met shall be reported as specified in paragraphs (b)(6)(iii)(A) and (b)(6)(iii)(B) of this section.

(A) Data or other information used to demonstrate that the criteria in paragraph (b)(6)(i)(A) or (b)(6)(i)(B) of this section have been met shall be reported in the Notification of Compliance Status, as required in § 63.1327(a)(8).

(B) The request for approval to use engineering assessment to estimate emissions from a batch emissions episode as allowed under paragraph (b)(6)(i)(C) of this section, and sufficient data or other information for demonstrating to the Administrator that engineering assessment is an accurate means of estimating emissions for that particular batch emissions episode shall be submitted with the Precompliance Report, as required in § 63.1335(e)(3).

* * * * *

(9) Individual HAP partial pressures in multicomponent systems shall be determined using the appropriate method specified in paragraphs (b)(9)(i) through (b)(9)(iii) of this section.

(i) If the components are miscible, use Raoult's law to calculate the partial pressures;

(ii) If the solution is a dilute aqueous mixture, use Henry's law constants to calculate partial pressures;

(iii) If Raoult's law or Henry's law are not appropriate or available, the owner or operator may use any of the options in paragraphs (b)(9)(iii)(A), (B), or (C) of this section.

(A) Experimentally obtained activity coefficients, Henry's law constants, or solubility data;

(B) Models, such as group-contribution models, to predict activity coefficients; or

(C) Assume the components of the system behave independently and use the summation of all vapor pressures from the HAPs as the total HAP partial pressure.

* * * * *

(d) *Minimum emission level exemption.* A batch process vent with annual emissions of TOC or organic HAP less than 11,800 kg/yr is considered a Group 2 batch process vent and the owner or operator of said batch process vent shall comply with the requirements in § 63.1322(f) or (g). Annual emissions of TOC or organic HAP are determined at the exit of the batch unit operation, as described in paragraph (a)(2) of this section, and are determined as specified in paragraph (b) of this section. The owner or operator of said batch process vent is not required to comply with the provisions in paragraphs (e) through (g) of this section.

(e) *Determination of average batch vent flow rate and annual average batch vent flow rate.* The owner or operator shall determine the average batch vent flow rate for each batch emission episode in accordance with one of the procedures provided in paragraphs (e)(1) through (e)(2) of this section. The annual average batch vent flow rate for a batch process vent shall be calculated as specified in paragraph (e)(3) of this section.

(1) Determination of the average batch vent flow rate for a batch emission episode by direct measurement shall be made using the procedures specified in paragraphs (e)(1)(i) through (e)(1)(iii) of this section.

(i) The volumetric flow rate (FR_i) for a batch emission episode, in standard cubic meters per minute (scmm) at 20°C, shall be determined using Method 2, 2A, 2C, or 2D, 40 CFR part 60, appendix A, as appropriate.

* * * * *

(iii) The average batch vent flow rate for a batch emission episode shall be calculated using Equation 14 of this subpart.

$$AFR_{episode} = \frac{\sum_{i=1}^{n} FR_i}{n} \qquad \text{[Eq. 14]}$$

Where:

$AFR_{episode}$ = Average batch vent flow rate for the batch emission episode, scmm.

FR_i = Flow rate for individual measurement i, scmm.

n = Number of flow rate measurements taken during the batch emission episode.

(2) The average batch vent flow rate for a batch emission episode may be determined by engineering assessment, as defined in paragraph (b)(6)(i) of this section. All data, assumptions, and procedures used shall be documented.

(3) The annual average batch vent flow rate for a batch process vent shall

be calculated using Equation 15 of this subpart.

$$AFR = \frac{\sum_{i=1}^{n}(DUR_i)(AFR_{episode,\,i})}{\sum_{i=1}^{n}(DUR_i)} \qquad \text{[Eq. 15]}$$

Where:

AFR = Annual average batch vent flow rate for the batch process vent, scmm.

DUR_i = Duration of type i batch emission episodes annually, hrs/yr.

$AFR_{episode,i}$ = Average batch vent flow rate for type i batch emission episode, scmm.

n = Number of types of batch emission episodes venting from the batch process vent.

* * * * *

(g) *Group 1/Group 2 status determination.* The owner or operator shall compare the cutoff flow rate, calculated in accordance with paragraph (f) of this section, with the annual average batch vent flow rate, determined in accordance with paragraph (e)(3) of this section. The group determination status for each batch process vent shall be made using the criteria specified in paragraphs (g)(1) and (g)(2) of this section.

(1) If the cutoff flow rate is greater than or equal to the annual average batch vent flow rate of the stream, the batch process vent is classified as a Group 1 batch process vent.

(2) If the cutoff flow rate is less than the annual average batch vent flow rate of the stream, the batch process vent is classified as a Group 2 batch process vent.

(h) * * *

(1) * * *

(iii) Average concentration of organic compounds containing halogens and hydrogen halides as measured by Method 26 or 26A, 40 CFR part 60, appendix A.

* * * * *

(2) The annual mass emissions of halogen atoms for a batch process vent shall be calculated using Equation 17 of this subpart.

$$E_{halogen} = K\left[\sum_{j=1}^{n}\sum_{i=1}^{m}\left(C_{avg_j}\right)\left(L_{j,\,i}\right)\left(M_{j,\,i}\right)\right]AFR \qquad \text{[Eq. 17]}$$

Where:

$E_{halogen}$ = Mass of halogen atoms, dry basis, kg/yr.

K = Constant, 0.022 $(ppmv)^{-1}$ (kg-mole per scm) (minute/yr), where standard temperature is 20 °C.

AFR = Annual average batch vent flow rate of the batch process vent, determined according to paragraph (e) of this section, scmm.

$M_{j,i}$ = Molecular weight of halogen atom i in compound j, kg/kg-mole.

$L_{j,i}$ = Number of atoms of halogen i in compound j.

n = Number of halogenated compounds j in the batch process vent.

m = Number of different halogens i in each compound j of the batch process vent.

C_{avgj} = Annual average batch vent concentration of halogenated compound j in the batch process vent as determined by using Equation 18 of this subpart, dry basis, ppmv.

$$C_{avg_j} = \frac{\sum_{i=1}^{n}(DUR_i)(C_i)}{\sum_{i=1}^{n}(DUR_i)} \qquad \text{[Eq. 18]}$$

Where:

DUR_i = Duration of type i batch emission episodes annually, hrs/yr.

C_i = Average batch vent concentration of halogenated compound j in type i batch emission episode, ppmv.

n = Number of types of batch emission episodes venting from the batch process vent.

* * * * *

(i) *Process changes affecting Group 2 batch process vents.* Whenever process changes, as described in paragraph (i)(1) of this section, are made that affect one or more Group 2 batch process vents and that could reasonably be expected to change one or more Group 2 batch process vents to Group 1 batch process vents or that could reasonably be expected to reduce the batch mass input limitation for one or more Group 2 batch process vents, the owner or operator shall comply with paragraphs (i)(2) and (3) of this section.

(1) Examples of process changes include the changes listed in paragraphs (i)(1)(i), (i)(1)(ii), and (i)(1)(iii) of this section.

(i) For all batch process vents, examples of process changes include, but are not limited to, changes in feedstock type or catalyst type; or whenever there is replacement, removal, or modification of recovery equipment considered part of the batch unit operation as specified in paragraph (a)(2) of this section; or increases in production capacity or production rate. For purposes of this paragraph (i), process changes do not include: process upsets; unintentional, temporary process changes; and changes that are within the margin of variation on which the original group determination was based.

(ii) For Group 2 batch process vents where the group determination and batch mass input limitation are based on the expected mix of products, the situations described in paragraphs (i)(1)(ii)(A) and (B) of this section shall be considered to be process changes.

(A) The production of combinations of products not considered in establishing the batch mass input limitation.

(B) The production of a recipe of a product with a total mass of HAP charged to the reactor during the production of a single batch of product that is higher than the total mass of HAP for the recipe used as the single highest-HAP recipe for that product in the batch mass input limitation determination.

(iii) For Group 2 batch process vents where the group determination and batch mass input limitation are based on the single highest-HAP recipe

(considering all products produced or processed in the batch unit operation), the production of a recipe having a total mass of HAP charged to the reactor (during the production of a single batch of product) that is higher than the total mass of HAP for the highest-HAP recipe used in the batch mass input limitation determination shall be considered to be a process change.

(2) For each batch process vent affected by a process change, the owner or operator shall redetermine the group status by repeating the procedures specified in paragraphs (b) through (g) of this section, as applicable; alternatively, engineering assessment, as described in paragraph (b)(6)(i) of this section, may be used to determine the effects of the process change.

(3) Based on the results from paragraph (i)(2) of this section, owners or operators of affected sources shall comply with either paragraph (i)(3)(i), (ii), or (iii) of this section.

(i) If the group redetermination described in paragraph (i)(2) of this section indicates that a Group 2 batch process vent has become a Group 1 batch process vent as a result of the process change, the owner or operator shall submit a report as specified in § 63.1327(b) and shall comply with the Group 1 provisions in §§ 63.1322 through 63.1327 in accordance with § 63.1310(i)(2)(ii).

(ii) If the redetermination described in paragraph (i)(2) of this section indicates that a Group 2 batch process vent with annual emissions less than the level specified in paragraph (d) of this section, that is in compliance with § 63.1322(g), now has annual emissions greater than or equal to the level specified in paragraph (d) of this section but remains a Group 2 batch process vent, the owner or operator shall comply with the provisions in paragraphs (i)(3)(ii)(A) through (C) of this section.

(A) Redetermine the batch mass input limitation;

(B) Submit a report as specified in § 63.1327(c); and

(C) Comply with § 63.1322(f), beginning with the year following the submittal of the report submitted according to paragraph (i)(3)(ii)(B) of this section.

(iii) If the group redetermination described in paragraph (i)(2) of this section indicates no change in group status or no change in the relation of annual emissions to the levels specified in paragraph (d) of this section, the owner or operator shall comply with paragraphs (i)(3)(iii)(A) and (i)(3)(iii)(B) of this section.

(A) The owner or operator shall redetermine the batch mass input limitation; and

(B) The owner or operator shall submit the new batch mass input limitation in accordance with § 63.1327(c).

(j) *Process changes to new SAN affected sources using a batch process.* Whenever process changes, as described in paragraph (j)(1) of this section, are made to a new affected source producing SAN using a batch process that could reasonably be expected to adversely impact the compliance status (i.e., achievement of 84 percent emission reduction) of the affected source, the owner or operator shall comply with paragraphs (j)(2) and (3) of this section.

* * * * *

(3) Where the redetermined percent reduction is less than 84 percent, the owner or operator of the affected source shall submit a report as specified in § 63.1327(d) and shall comply with § 63.1322(a)(3) and all associated provisions in accordance with § 63.1310(i).

43. Section 63.1324 is amended by revising the section title and paragraphs (a) introductory text, (a)(2), (c) introductory text, and (c)(4)(ii), (c)(7), (d) introductory text, (e) introductory text, and (e)(2), (f)(1) introductory text, (f)(1)(ii), and (f)(3); and removing paragraph (e)(3), to read as follows:

§ 63.1324 Batch process vents—monitoring equipment.

(a) *General requirements.* Each owner or operator of a batch process vent or aggregate batch vent stream that uses a control device to comply with the requirements in § 63.1322(a) or § 63.1322(b), shall install the monitoring equipment specified in paragraph (c) of this section. All monitoring equipment shall be installed, calibrated, maintained, and operated according to manufacturer's specifications or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately.

* * * * *

(2) Except as otherwise provided in this subpart, the owner or operator shall operate control devices such that the daily average of monitored parameters, established as specified in paragraph (f) of this section, remains above the minimum level or below the maximum level, as appropriate.

* * * * *

(c) *Batch process vent and aggregate batch vent stream monitoring equipment.* The monitoring equipment specified in paragraphs (c)(1) through (c)(8) of this section shall be installed as specified in paragraph (a) of this section. The parameters to be monitored are specified in Table 7 of this subpart.

* * * * *

(4) * * *

(ii) A flow measurement device equipped with a continuous recorder shall be located at the scrubber influent for liquid flow. Gas stream flow shall be determined using one of the procedures specified in paragraphs (c)(4)(ii)(A) through (c)(4)(ii)(C) of this section.

(A) The owner or operator may determine gas stream flow using the design blower capacity, with appropriate adjustments for pressure drop.

(B) If the scrubber is subject to regulations in 40 CFR parts 264 through 266 that have required a determination of the liquid to gas (L/G) ratio prior to the applicable compliance date for this subpart, the owner or operator may determine gas stream flow by the method that had been utilized to comply with those regulations. A determination that was conducted prior to the compliance date for this subpart may be utilized to comply with this subpart if it is still representative.

(C) The owner or operator may prepare and implement a gas stream flow determination plan that documents an appropriate method which will be used to determine the gas stream flow. The plan shall require determination of gas stream flow by a method which will at least provide a value for either a representative or the highest gas stream flow anticipated in the scrubber during representative operating conditions other than start-ups, shutdowns, or malfunctions. The plan shall include a description of the methodology to be followed and an explanation of how the selected methodology will reliably determine the gas stream flow, and a description of the records that will be maintained to document the determination of gas stream flow. The owner or operator shall maintain the plan as specified in § 63.1335(a).

* * * * *

(7) Where a carbon adsorber is used, an integrating regeneration steam flow or nitrogen flow, or pressure monitoring device having an accuracy of ±10 percent of the flow rate, level, or pressure, or better, capable of recording the total regeneration steam flow or nitrogen flow, or pressure (gauge or absolute) for each regeneration cycle; and a carbon bed temperature monitoring device, capable of recording the carbon bed temperature after each regeneration and within 15 minutes of

completing any cooling cycle are required.

* * * * *

(d) *Alternative monitoring parameters.* An owner or operator of a batch process vent or aggregate batch vent stream may request approval to monitor parameters other than those required by paragraph (c) of this section. The request shall be submitted according to the procedures specified in § 63.1327(f) and § 63.1335(f). Approval shall be requested if the owner or operator:

* * * * *

(e) *Monitoring of bypass lines.* Owners or operators of a batch process vent or aggregate batch vent stream using a vent system that contains bypass lines that could divert emissions away from a control device used to comply with § 63.1322(a) or § 63.1322(b) shall comply with either paragraph (e)(1) or (e)(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 (e).

* * * * *

(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 § 63.1326(e)(4).

(f) * * *

(1) For each parameter monitored under paragraph (c) or (d) of this section, the owner or operator shall establish a level, defined as either a maximum or minimum operating parameter as denoted in Table 8 of this subpart, that indicates proper operation of the control device. The level shall be established in accordance with the procedures specified in § 63.1334. The level may be based upon a prior performance test conducted for determining compliance with a regulation promulgated by EPA, and the owner or operator is not required to conduct a performance test under § 63.1325, provided that the prior performance test meets the conditions of § 63.1325(b)(3).

* * * * *

(ii) For aggregate batch vent streams using a control device to comply with § 63.1322(b)(2), the established level shall reflect the emission reduction requirement of 90 percent specified in § 63.1322(b)(2).

* * * * *

(3) The operating day shall be defined as part of establishing the parameter monitoring level and shall be submitted with the information in paragraph (f)(2) of this section. The definition of operating day shall specify the time(s) at which an operating day begins and ends. The operating day shall not exceed 24 hours.

* * * * *

44. Section 63.1325 is amended by:

a. Revising paragraphs (a), (b) introductory text, (b)(3), (b)(5), (c) introductory text, (c)(1)(i)(A), (c)(1)(i)(B) introductory text, (c)(1)(i)(C), (c)(1)(i)(D) introductory text, (c)(1)(ii), (c)(1)(iii) introductory text, (c)(1)(iii)(A), (c)(1)(v), (c)(2) introductory text, (d)(1), (d)(2)(ii), (d)(3), (d)(4), (e), and (g); and

b. Removing paragraph (b)(6), to read as follows:

§ 63.1325 Batch process vents—performance test methods and procedures to determine compliance.

(a) *Use of a flare.* When a flare is used to comply with § 63.1322(a)(1), § 63.1322(a)(3), § 63.1322(b)(1), or § 63.1322(b)(3), the owner or operator of an affected source shall comply with § 63.1333(e).

(b) *Exceptions to performance tests.* An owner or operator is not required to conduct a performance test when a control device specified in paragraphs (b)(1) through (b)(5) of this section is used to comply with § 63.1322(a)(2) or (a)(3).

* * * * *

(3) A control device for which a performance test was conducted for determining compliance with a regulation promulgated by the EPA and the test was conducted using the same Methods specified in this section and either no deliberate process changes have been made since the test, or the owner or operator can demonstrate that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite process changes. Recovery devices used for controlling emissions from continuous process vents complying with § 63.1322(a)(3) are also eligible for the exemption described in this paragraph (b)(3).

* * * * *

(5) A hazardous waste incinerator for which the owner or operator has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 264, subpart O, or has certified compliance with the interim status requirements of 40 CFR part 265, subpart O.

(c) *Batch process vent testing and procedures for compliance with § 63.1322(a)(2).* Except as provided in paragraph (a) or (b) of this section, an owner or operator using a control device to comply with § 63.1322(a)(2) shall conduct a performance test using the procedures specified in paragraph (c)(1) of this section in order to determine the control efficiency of the control device. An owner or operator shall determine the percent reduction for the batch cycle using the control efficiency of the control device as specified in paragraphs (c)(2)(i) through (c)(2)(iii) of this section and the procedures specified in paragraph (c)(2) of this section. Compliance may be based on either total organic HAP or TOC. For purposes of this paragraph (c), the term ''batch emission episode'' shall have the meaning ''period of the batch emission episode selected for control,'' which may be the entire batch emission episode or may only be a portion of the batch emission episode.

(1) * * *

(i) * * *

(A) Alternatively, an owner or operator may choose to test only those periods of the batch emission episode during which the emission rate for the entire episode can be determined or during which the emissions are greater than the average emission rate of the batch emission episode. The owner or operator choosing either of these options shall develop an emission profile for the entire batch emission episode, based on either process knowledge or test data collected, to demonstrate that test periods are representative. Examples of information that could constitute process knowledge include calculations based on material balances and process stoichiometry. Previous test results may be used provided the results are still relevant to the current batch process vent conditions.

(B) Method 1 or 1A, 40 CFR part 60, appendix A, as appropriate, shall be used for selection of the sampling sites if the flow measuring device is a pitot tube, except that references to particulate matter in Method 1A do not apply for the purposes of this subpart. No traverse is necessary when Method 2A or 2D, 40 CFR part 60, appendix A is used to determine gas stream volumetric flow rate. Inlet sampling sites shall be located as specified in paragraphs (c)(1)(i)(B)(*1*) and (c)(1)(i)(B)(*2*) of this section. Outlet sampling sites shall be located at the outlet of the control device prior to release to the atmosphere.

* * * * *

(C) Gas stream volumetric flow rate and/or average batch vent flow rate shall be determined as specified in § 63.1323(e).

(D) Method 18 or Method 25A, 40 CFR part 60, appendix A shall be used to determine the concentration of organic HAP or TOC, as appropriate. Alternatively, any other method or data that has been validated according to the applicable procedures in Method 301 of appendix A of this part may be used. The use of Method 25A, 40 CFR part 60, appendix A shall conform with the requirements in paragraphs (c)(1)(i)(D)(*1*) and (c)(1)(i)(D)(*2*) of this section.

* * * * *

(ii) If an integrated sample is taken over the entire test period to determine average batch vent concentration of TOC or total organic HAP, emissions per batch emission episode shall be calculated using Equations 19 and 20 of this subpart.

$$E_{episode,\ inlet} = K\left[\sum_{j=1}^{n}\left(C_{j,\ inlet}\right)\left(M_j\right)\right]\left(AFR_{inlet}\right)\left(T_h\right) \qquad \text{[Eq. 19]}$$

$$E_{episode,\ outlet} = K\left[\sum_{j=1}^{n}\left(C_{j,\ outlet}\right)\left(M_j\right)\right]\left(AFR_{outlet}\right)\left(T_h\right) \qquad \text{[Eq. 20]}$$

Where:

$E_{episode}$ = Inlet or outlet emissions, kg/episode.

K = Constant, 2.494×10^{-6} $(ppmv)^{-1}$ (gm-mole/scm) (kg/gm) (min/hr), where standard temperature is 20 °C.

C_j = Average inlet or outlet concentration of TOC or sample organic HAP component j of the gas stream for the batch emission episode, dry basis, ppmv.

M_j = Molecular weight of TOC or sample organic HAP component j of the gas stream, gm/gm-mole.

AFR = Average inlet or outlet flow rate of gas stream for the batch emission episode, dry basis, scmm.

T_h = Hours/episode

n = Number of organic HAP in stream. Note: Summation is not applicable if TOC emissions are being estimated using a TOC concentration measured using Method 25A, 40 CFR part 60, appendix A.

(iii) If grab samples are taken to determine average batch vent concentration of TOC or total organic HAP, emissions shall be calculated according to paragraphs (c)(1)(iii)(A) and (B) of this section.

(A) For each measurement point, the emission rates shall be calculated using Equations 21 and 22 of this subpart.

$$E_{point,\ inlet} = K\left[\sum_{j=1}^{n} C_j M_j\right] FR_{inlet} \qquad \text{[Eq. 21]}$$

$$E_{point,\ outlet} = K\left[\sum_{j=1}^{n} C_j M_j\right] FR_{outlet} \qquad \text{[Eq. 22]}$$

Where:

E_{point} = Inlet or outlet emission rate for the measurement point, kg/hr.

K = Constant, $2.494 \times 10_{-6}$ $(ppmv)^{-1}$ (gm-mole/scm) (kg/gm) (min/hr), where standard temperature is 20 °C.

C_j = Inlet or outlet concentration of TOC or sample organic HAP component j of the gas stream, dry basis, ppmv.

M_j = Molecular weight of TOC or sample organic HAP component j of the gas stream, gm/gm-mole.

FR=Inlet or outlet flow rate of gas stream for the measurement point, dry basis, scmm.

n=Number of organic HAP in stream. Note: Summation is not applicable if TOC emissions are being estimated using a TOC concentration measured using Method 25A, 40 CFR part 60, appendix A.

* * * * *

(v) If the batch process vent entering a boiler or process heater with a design capacity less than 44 megawatts is introduced with the combustion air or as a secondary fuel, the weight-percent reduction of total organic HAP or TOC across the device shall be determined by comparing the TOC or total organic HAP in all combusted batch process vents and primary and secondary fuels with the TOC or total organic HAP, respectively, exiting the combustion device.

(2) The percent reduction for the batch cycle shall be determined using Equation 26 of this subpart and the control device efficiencies specified in paragraphs (c)(2)(i) through (c)(2)(iii) of this section. All information used to calculate the batch cycle percent reduction, including a definition of the batch cycle identifying all batch emission episodes, shall be recorded as specified in § 63.1326(b)(2). This information shall include identification of those batch emission episodes, or portions thereof, selected for control.

$$PR = \frac{\sum_{i=1}^{n} E_{unc} + \sum_{i=1}^{n} E_{inlet,\ con} - \sum_{i=1}^{n} (1-R)\ E_{inlet,\ con}}{\sum_{i=1}^{n} E_{unc} + \sum_{i=1}^{n} E_{inlet,\ con}} (100) \qquad \text{[Eq. 26]}$$

Where:

PR=Percent reduction

E_{unc}=Mass rate of TOC or total organic HAP for uncontrolled batch emission episode i, kg/hr.

$E_{inlet,con}$=Mass rate of TOC or total organic HAP for controlled batch emission episode i at the inlet to the control device, kg/hr.

R=Control efficiency of control device as specified in paragraphs (c)(2)(i) through (c)(2)(iii) of this section.

n=Number of uncontrolled batch emission episodes, controlled batch emission episodes, and control devices. The value of n is not necessarily the same for these three items.

* * * * *

(d) * * *

(1) Sampling sites shall be located at the inlet and outlet of the scrubber or other halogen reduction device used to reduce halogen emissions in complying with § 63.1322(c)(1) or at the outlet of the halogen reduction device used to reduce halogen emissions in complying with § 63.1322(c)(2).

(2) * * *

(ii) Gas stream volumetric flow rate and/or average batch vent flow rate shall be determined as specified in § 63.1323(e).

(3) To determine compliance with the percent reduction specified in § 63.1322(c)(1), the mass emissions for any hydrogen halides and halogens present at the inlet of the scrubber or other halogen reduction device shall be summed together. The mass emissions of any hydrogen halides or halogens present at the outlet of the scrubber or other halogen reduction device shall be summed together. Percent reduction shall be determined by subtracting the outlet mass emissions from the inlet mass emissions and then dividing the result by the inlet mass emissions and multiplying by 100.

(4) To determine compliance with the emission limit specified in § 63.1322(c)(2), the annual mass emissions for any hydrogen halides and halogens present at the outlet of the halogen reduction device and prior to any combustion device shall be summed together and compared to the emission limit specified in § 63.1322(c)(2).

* * * * *

(e) *Aggregate batch vent stream testing for compliance with § 63.1322 (b)(2) or (b)(3).* Except as specified in paragraphs (e)(1) through (e)(2) of this section, owners or operators of aggregate batch vent streams complying with § 63.1322(b)(2) or (b)(3) shall conduct a performance test using the performance testing procedures for continuous process vents in § 63.116(c).

(1) For purposes of this subpart, when the provisions of § 63.116(c) specify that Method 18, 40 CFR part 60, appendix A, shall be used, Method 18 or Method 25A, 40 CFR part 60, appendix A, may be used. The use of Method 25A, 40 CFR part 60, appendix A, shall conform with the requirements in paragraphs (e)(1)(i) and (e)(1)(ii) of this section.

(i) The organic HAP used as the calibration gas for Method 25A, 40 CFR part 60, appendix A, shall be the single organic HAP representing the largest percent by volume of the emissions.

(ii) The use of Method 25A, 40 CFR part 60, appendix A, is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(2) When § 63.116(c)(4) refers to complying with an emission reduction of 98 percent, for purposes of this subpart, the 90 percent reduction requirement specified in § 63.1322(b)(2) shall apply.

* * * * *

(g) *Batch mass input limitation.* The batch mass input limitation required by § 63.1322(g)(1) shall be determined by the owner or operator such that annual emissions for the batch process vent remain less than the level specified in § 63.1323(d). The batch mass input limitation required by § 63.1322(f)(1) shall be determined by the owner or operator such that annual emissions remain at a level that ensures that said batch process vent remains a Group 2 batch process vent, given the actual annual flow rate for said batch process vent determined according to the procedures specified in § 63.1323(e)(3). The batch mass input limitation shall be determined using the same basis, as described in § 63.1323(a)(1), used to make the group determination (i.e., expected mix of products or highest-HAP recipe.) The establishment of the batch mass input limitation is not dependent upon any past production or activity level.

(1) If the expected mix of products serves as the basis for the batch mass input limitation, the batch mass input limitation shall be determined based on any foreseeable combination of products that the owner or operator expects to manufacture.

(2) If the single highest-HAP recipe serves as the basis for the batch mass input limitation, the batch mass input limitation shall be determined based solely on the production of the single highest-HAP recipe, considering all products produced or processed in the batch unit operation.

45. Section 63.1326 is amended by:

a. Revising paragraphs (a) introductory text, (a)(1), and (a)(2), (a)(3)(i), (a)(4), (a)(7), (a)(8), (a)(9), (b) introductory text, (b)(2), (b)(3)(ii), (b)(3)(iii), (b)(4)(iv), (d)(1), (d)(2), (e) introductory text, (e)(1)(i), (e)(1)(ii), (e)(2) introductory text, (e)(2)(ii), (e)(4), and (f); and

b. Adding paragraph (g), to read as follows:

§ 63.1326 Batch process vents—recordkeeping provisions.

(a) *Group determination records for batch process vents.* Except as provided in paragraphs (a)(7) and (a)(8) of this section, each owner or operator of an affected source shall maintain the records specified in paragraphs (a)(1) through (a)(6) of this section for each batch process vent subject to the group determination procedures of § 63.1323. Except for paragraph (a)(1) of this section, the records required by this paragraph (a) are restricted to the information developed and used to make the group determination under §§ 63.1323(b) through 63.1323(g), as appropriate. If an owner or operator did not need to develop certain information (e.g., annual average batch vent flow rate) to determine the group status, this paragraph (a) does not require that additional information be developed. Paragraph (a)(9) of this section specifies the recordkeeping requirements for Group 2 batch process vents that are exempt from the batch mass input limitation provisions, as allowed under § 63.1322(h).

(1) An identification of each unique product that has emissions from one or

more batch emission episodes venting from the batch process vent, along with an identification of the single highest-HAP recipe for each product and the mass of HAP fed to the reactor for that recipe.

(2) A description of, and an emission estimate for, each batch emission episode, and the total emissions associated with one batch cycle, as described in either paragraph (a)(2)(i) or (a)(2)(ii) of this section, as appropriate.

(i) If the group determination is based on the expected mix of products, records shall include the emission estimates for the single highest-HAP recipe of each unique product identified in paragraph (a)(1) of this section that was considered in making the group determination under § 63.1323.

(ii) If the group determination is based on the single highest-HAP recipe (considering all products produced or processed in the batch unit operation), records shall include the emission estimates for the single highest-HAP recipe.

(3) * * *

(i) For Group 2 batch process vents, said emissions shall be determined at the batch mass input limitation.

* * * * *

(4) The annual average batch vent flow rate for the batch process vent, determined in accordance with § 63.1323(e).

* * * * *

(7) If a batch process vent is subject to § 63.1322 (a) or (b), none of the records in paragraphs (a)(1) through (a)(6) of this section are required.

(8) If the total annual emissions from the batch process vent during the group determination are less than the appropriate level specified in § 63.1323(d), only the records in paragraphs (a)(1) through (a)(3) of this section are required.

(9) For each Group 2 batch process vent that is exempt from the batch mass input limitation provisions because it meets the criteria of § 63.1322(h), the records specified in paragraphs (a)(9)(i) and (ii) shall be maintained.

(i) Documentation of the maximum design capacity of the TPPU; and

(ii) The mass of HAP or material that can be charged annually to the batch unit operation at the maximum design capacity.

(b) *Compliance demonstration records.* Each owner or operator of a batch process vent or aggregate batch vent stream complying with § 63.1322(a) or (b), shall keep the following records, as applicable, readily accessible:

* * * * *

(2) If the owner or operator of a batch process vent has chosen to comply with § 63.1322(a)(2), records documenting the batch cycle percent reduction as specified in § 63.1325(c)(2); and

(3) * * *

(ii) All visible emission readings, heat content determinations, flow rate measurements, and exit velocity determinations made during the compliance determination required by § 63.1333(e); and

(iii) Periods when all pilot flames were absent.

(4) * * *

(iv) For a scrubber or other halogen reduction device following a combustion device to control halogenated batch process vents or halogenated aggregate batch vent streams, the percent reduction of total hydrogen halides and halogens as determined under § 63.1325(d)(3) or the emission limit determined under § 63.1325(d)(4).

* * * * *

(d) * * *

(1) The owner or operator of a Group 2 batch process vent that has chosen to comply with § 63.1322(g) shall keep the following records readily accessible:

(i) Records designating the established batch mass input limitation required by § 63.1322(g)(1) and specified in § 63.1325(g).

(ii) Records specifying the mass of HAP or material charged to the batch unit operation.

(2) The owner or operator of a Group 2 batch process vent that has chosen to comply with § 63.1322(f) shall keep the following records readily accessible:

(i) Records designating the established batch mass input limitation required by § 63.1322(f)(1) and specified in § 63.1325(g).

(ii) Records specifying the mass of HAP or material charged to the batch unit operation.

(e) *Controlled batch process vent continuous compliance records.* Each owner or operator of a batch process vent that has chosen to use a control device to comply with § 63.1322(a) shall keep the following records, as applicable, readily accessible:

(1) * * *

(i) For flares, the records specified in Table 7 of this subpart shall be maintained in place of continuous records.

(ii) For carbon adsorbers, the records specified in Table 7 of this subpart shall be maintained in place of batch cycle daily averages.

(2) Records of the batch cycle daily average value of each continuously monitored parameter, except as provided in paragraph (e)(2)(iii) of this section, as calculated using the procedures specified in paragraphs (e)(2)(i) and (e)(2)(ii) of this section.

* * * * *

(ii) Monitoring data recorded during periods of monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments shall not be included in computing the batch cycle daily averages. In addition, monitoring data recorded during periods of non-operation of the TPPU (or specific portion thereof) resulting in cessation of organic HAP emissions, or periods of start-up, shutdown, or malfunction shall not be included in computing the batch cycle daily averages.

* * * * *

(4) Where a seal or closure mechanism is used to comply with § 63.1324(e)(2), 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.

* * * * *

(f) *Aggregate batch vent stream continuous compliance records.* In addition to the records specified in paragraphs (b) and (c) of this section, each owner or operator of an aggregate batch vent stream using a control device to comply with § 63.1322(b)(1) or (b)(2) shall keep the following records readily accessible:

(1) Continuous records of the equipment operating parameters specified to be monitored under § 63.1324(c) and listed in Table 7 of this subpart, as applicable, or specified by the Administrator in accordance with § 63.1327(f), as allowed under § 63.1324(d), with the exceptions listed in (f)(1)(i) and (f)(1)(ii) of this section.

(i) For flares, the records specified in Table 7 of this subpart shall be maintained in place of continuous records.

(ii) For carbon adsorbers, the records specified in Table 7 of this subpart shall be maintained in place of daily averages.

(2) Records of the daily average value of each continuously monitored parameter for each operating day determined according to the procedures specified in § 63.1335(d).

(3) For demonstrating compliance with the monitoring of bypass lines as specified in § 63.1324(e), records as

specified in paragraphs (e)(3) or (e)(4) of this section, as appropriate.

(g) Documentation supporting the establishment of the batch mass input limitation shall include the information specified in paragraphs (g)(1) through (g)(5) of this section, as appropriate.

(1) Identification of whether the purpose of the batch mass input limitation is to comply with § 63.1322(f)(1) or (g)(1).

(2) Identification of whether the batch mass input limitation is based on the single highest-HAP recipe (considering all products) or on the expected mix of products for the batch process vent as allowed under § 63.1323(a)(1).

(3) Definition of the operating year, for the purposes of determining compliance with the batch mass input limitation.

(4) If the batch mass input limitation is based on the expected mix of products, the owner or operator shall provide documentation that describes as many scenarios for differing mixes of products (i.e., how many of each type of product) as the owner or operator desires the flexibility to accomplish. Alternatively, the owner or operator shall provide a description of the relationship among the mix of products that will allow a determination of compliance with the batch mass input limitation under any number of scenarios.

(5) The mass of HAP or material allowed to be charged to the batch unit operation per year under the batch mass input limitation.

46. Section 63.1327 is amended by:

a. Revising paragraph (a) introductory text, (b), (c) introductory text, (c)(2), (d), (e), and (g);

b. Removing paragraph (c)(3); and

c. Adding paragraphs (a)(5) and (a)(6), to read as follows:

§ 63.1327 Batch process vents—reporting requirements.

(a) The owner or operator of a batch process vent or aggregate batch vent stream at an affected source shall submit the information specified in paragraphs (a)(1) through (a)(6) of this section, as appropriate, as part of the Notification of Compliance Status specified in § 63.1335(e)(5).

* * * * *

(5) For each Group 2 batch process vent that is exempt from the batch mass input limitation provisions because it meets the criteria of § 63.1322(h), the information specified in § 63.1326(a)(1) through (3), and the information specified in § 63.1326(a)(4) through (6) as applicable, calculated at the conditions specified in § 63.1322(h).

(6) When engineering assessment has been used to estimate emissions from a batch emissions episode and the criteria specified in § 63.1323(b)(6)(i)(A) or (B) have been met, the owner or operator shall submit the information demonstrating that the criteria specified in § 63.1323(b)(6)(i)(A) or (B) have been met as part of the Notification of Compliance Status required by § 63.1335(e)(5).

(b) Whenever a process change, as defined in § 63.1323(i)(1), is made that causes a Group 2 batch process vent to become a Group 1 batch process vent, the owner or operator shall notify the Administrator and submit a description of the process change within 180 days after the process change is made or with the next Periodic Report, whichever is later. The owner or operator of an affected source shall comply with the Group 1 batch process vent provisions in §§ 63.1321 through 63.1327 in accordance with § 63.480(i)(2)(ii).

(c) Whenever a process change, as defined in § 63.1323(i)(1), is made that causes a Group 2 batch process vent with annual emissions less than the level specified in § 63.1323(d) for which the owner or operator has chosen to comply with § 63.1322(g) to have annual emissions greater than or equal to the level specified in § 63.1323(d) but remains a Group 2 batch process vent, or if a process change is made that requires the owner or operator to redetermine the batch mass input limitation as specified in § 63.1323(i)(3), the owner or operator shall submit a report within 180 days after the process change is made or with the next Periodic Report, whichever is later. The following information shall be submitted:

* * * * *

(2) The batch mass input limitation determined in accordance with § 63.1322(f)(1).

(d) Whenever a process change, as defined in § 63.1323(j)(1), is made that causes the percent reduction for all process vents at a new SAN affected source using a batch process to be less than 84 percent, the owner or operator shall notify the Administrator and submit a description of the process change within 180 days after the process change is made or with the next Periodic Report, whichever is later. The owner or operator shall comply with § 63.1322(a)(3) and all associated provisions in accordance with § 63.1310(i).

(e) The owner or operator is not required to submit a report of a process change if one of the conditions specified in paragraphs (e)(1) or (e)(2) of this section is met.

(1) The change does not meet the description of a process change in § 63.1323(i) or (j).

(2) The redetermined group status remains Group 2 for an individual batch process vent with annual emissions greater than or equal to the level specified in § 63.1323(d) and the batch mass input limitation does not decrease, a Group 2 batch process vent with annual emissions less than the level specified in § 63.1323(d) complying with § 63.1322(g) continues to have emissions less than the level specified in § 63.1323(d) and the batch mass input limitation does not decrease, or the achieved emission reduction remains at 84 percent or greater for new SAN affected sources using a batch process.

* * * * *

(g) Owners or operators of affected sources complying with § 63.1324(e), shall comply with paragraph (g)(1) or (g)(2) of this section, as appropriate.

(1) Submit reports of the times of all periods recorded under § 63.1326(e)(3) when the batch process vent is diverted from the control device through a bypass line, with the next Periodic Report.

(2) Submit reports of all occurrences recorded under § 63.1326(e)(4) 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 Periodic Report.

47. Section 63.1328 is revised, to read as follows:

§ 63.1328 Heat exchange systems provisions.

(a) Except as specified in paragraph (b) of this section, each owner or operator of an affected source shall comply with § 63.104, with the differences noted in paragraphs (c) through (h) of this section, for the purposes of this subpart.

(b) The provisions of paragraph (a) of this section do not apply to each process contact cooling tower that is associated with an existing affected source manufacturing PET.

(c) When the term ''chemical manufacturing process unit'' is used in § 63.104, the term ''thermoplastic product process unit'' shall apply for purposes of this subpart, with the exception noted in paragraph (d) of this section.

(d) When the phrase ''a chemical manufacturing process unit meeting the conditions of § 63.100(b)(1) through (b)(3) of this subpart, except for chemical manufacturing process units meeting the condition specified in § 63.100(c) of this subpart'' is used in

§ 63.104(a), the term ''a TPPU, except for TPPUs meeting the condition specified in § 63.1310(b)'' shall apply for purposes of this subpart.

(e) When § 63.104 refers to Table 4 of subpart F of this part or Table 9 of subpart G of this part, the owner or operator is only required to consider organic HAP listed on Table 6 of this subpart, except for ethylene glycol which need not be considered under this section, for purposes of this subpart.

(f) When § 63.104(c)(3) and § 63.104(f)(1) specify that the monitoring plan and records required by § 63.104(f)(1)(i) through (f)(1)(iv) shall be kept as specified in § 63.103(c), the provisions of § 63.1335(a) and § 63.1335(h) shall apply for purposes of this subpart.

(g) When § 63.104(f)(2) requires information to be reported in the Periodic Reports required by § 63.152(c), the owner or operator shall instead report the information specified in § 63.104(f)(2) in the Periodic Reports required by § 63.1335(e)(6), for the purposes of this subpart.

(h) The compliance date for heat exchange systems subject to the provisions of this section is specified in § 63.1311.

48. Section 63.1329 is amended by revising paragraphs (a), (c) introductory text, (c)(1)(i) through (c)(1)(iii), and (c)(2), to read as follows:

§ 63.1329 Process contact cooling towers provisions.

(a) The owner or operator of each new affected source that manufactures PET is required to comply with paragraph (b) of this section. The owner or operator of each existing affected source that manufactures PET using a continuous terephthalic acid high viscosity multiple end finisher process that utilizes a process contact cooling tower shall comply with paragraph (c) of this section, and is not required to comply with paragraph (b) of this section. The compliance date for process contact cooling towers subject to the provisions of this section is specified in § 63.1311.

* * * * *

(c) *Existing affected source requirements.* The owner or operator of an existing affected source subject to this section who manufactures PET using a continuous terephthalic acid high viscosity multiple end finisher process, and who is subject or becomes subject to 40 CFR part 60, subpart DDD, shall maintain an ethylene glycol concentration in the process contact cooling tower at or below 4.0 percent by weight averaged on a daily basis over a rolling 14-day period of operating days. Compliance with this paragraph (c) shall be determined as specified in paragraphs (c)(1) through (c)(4) of this section. It should be noted that compliance with this paragraph (c) does not exempt owners or operators from complying with the provisions of § 63.1330 for those process wastewater streams that are sent to the process contact cooling tower.

(1) * * *

(i) At least one sample per operating day shall be collected using the procedures specified in 40 CFR 60.564(j)(1)(i). An average ethylene glycol concentration by weight shall be calculated on a daily basis over a rolling 14-day period of operating days. Each daily average ethylene glycol concentration so calculated constitutes a performance test.

(ii) The owner or operator may elect to reduce the sampling program to any 14 consecutive operating day period once every two calendar months, if at least seventeen consecutive 14-day rolling average concentrations immediately preceding the reduced sampling program are each less than 1.2 weight percent ethylene glycol. If the average concentration obtained over the 14 operating day sampling during the reduced test period exceeds the upper 95 percent confidence interval calculated from the most recent test results in which no one 14-day average exceeded 1.2 weight percent ethylene glycol, then the owner or operator shall reinstitute a daily sampling program. The 95 percent confidence interval shall be calculated as specified in paragraph (c)(1)(iii) of this section. A reduced program may be reinstituted if the requirements specified in this paragraph (c)(1)(ii) are met.

(iii) The upper 95 percent confidence interval shall be calculated using the Equation 27 of this subpart:

$$CI_{95} = \frac{\sum_{i=1}^{n} X_i}{n} + 2\sqrt{\frac{n\sum_{i=1}^{n}\left(X_i^2\right) - \left(\sum_{i=1}^{n} X_i\right)^2}{n\,(n-1)}} \qquad \text{[Eq. 27]}$$

Where:

CI_{95}=95 percent confidence interval

X_i=daily ethylene glycol concentration for each operating day used to calculate each 14-day rolling average used in test results to justify implementing the reduced testing program.

n=number of ethylene glycol concentrations.

(2) Measuring an alternative parameter, such as carbon oxygen demand or biological oxygen demand, that is demonstrated to be directly proportional to the ethylene glycol concentration shall be allowed. Such parameter shall be measured during the initial 14-day performance test during which the facility is shown to be in compliance with the ethylene glycol concentration standard whereby the ethylene glycol concentration is determined using the procedures described in paragraph (c)(1) of this section. The alternative parameter shall be measured on a daily basis and the average value of the alternative parameter shall be calculated on a daily basis over a rolling 14-day period of operating days. Each daily average value of the alternative parameter constitutes a performance test.

* * * * *

49. Section 63.1330 is amended by revising paragraphs (a) and (b) and adding paragraph (c), to read as follows:

§ 63.1330 Wastewater provisions.

(a) Except as specified in paragraphs (d) and (e) of this section, the owner or operator of each affected source shall comply, as specified in paragraph (b) of this section, with the requirements of §§ 63.132 through 63.147 for each process wastewater stream originating at an affected source, with the requirements of § 63.148 for leak inspection provisions, and with the requirements of § 63.149 for equipment that is subject to § 63.149. Further, the owner or operator of each affected source shall comply with the requirements of § 63.105(a) for maintenance wastewater as specified in paragraph (c) of this section.

(b) The owner or operator of each affected source shall comply with the requirements of §§ 63.132 through 63.149, with the differences noted in paragraphs (b)(1) through (b)(22) of this section for the purposes of this subpart.

(1) When the determination of equivalence criteria in § 63.102(b) is referred to in §§ 63.132, 63.133, and 63.137, the provisions in § 63.6(g) shall apply for the purposes of this subpart.

(2) When the storage vessel requirements contained in §§ 63.119 through 63.123 are referred to in §§ 63.132 through 63.149, §§ 63.119 through 63.123 are applicable, with the exception of the differences referred to in § 63.1314, for the purposes of this subpart.

(3) When § 63.146(a) requires the submission of a request for approval to monitor alternative parameters according to the procedures specified in § 63.151(g) or § 63.152(e), owners or operators requesting to monitor alternative parameters shall follow the procedures specified in § 63.1335(g) for the purposes of this subpart.

(4) When § 63.147(d) requires owners or operators to keep records of the daily average value of each continuously monitored parameter for each operating day as specified in § 63.152(f), owners and operators shall instead keep records of the daily average value of each continuously monitored parameter as specified in § 63.1335(d) for the purposes of this subpart.

(5) When §§ 63.132 through 63.149 refer to an ''existing source,'' the term ''existing affected source,'' as defined in § 63.1310(a), shall apply for the purposes of this subpart.

(6) When §§ 63.132 through 63.149 refer to a ''new source,'' the term ''new affected source,'' as defined in § 63.1310(a), shall apply for the purposes of this subpart.

(7) When § 63.132(a) and (b) refer to the ''applicable dates specified in § 63.100 of subpart F of this part,'' the compliance dates specified in § 63.1311 shall apply for the purposes of this subpart.

(8) When §§ 63.132 through 63.149 refer to table 8, the owners or operator is only required to consider 1,3-butadiene for purposes of this subpart. When §§ 63.132 through 63.149 refer to table 9 or table 36, the owners or operator is only required to consider organic HAP listed on table 6 of this subpart for the purposes of this subpart, except for ethylene glycol which need not be considered. In addition, when §§ 63.132 through 63.149 refer to List 1, List 2, and/or List 3, as listed in Table 36 of subpart G of this part, the owner or operator is only required to consider organic HAP that are also listed on Table 6 of this subpart, for the purposes of this subpart.

(9) Whenever §§ 63.132 through 63.149 refer to a ''chemical manufacturing process unit,'' the term ''thermoplastic product process unit,'' (or TPPU) as defined in § 63.1312, shall apply for the purposes of this subpart. In addition, when § 63.149 refers to ''a chemical manufacturing process unit that meets the criteria of § 63.100(b) of subpart F of this part,'' the term ''a TPPU as defined in § 63.1312(b)'' shall apply for the purposes of this subpart.

(10) Whenever §§ 63.132 through 63.149 refer to a Group 1 wastewater stream or a Group 2 wastewater stream, the definitions of these terms contained in § 63.1312 shall apply for the purposes of this subpart.

(11) When § 63.149(d) refers to ''§ 63.100(f) of subpart F'', the phrase ''§ 63.1310(c)'' shall apply for the purposes of this subpart. In addition, where § 63.149(d) states ''and the item of equipment is not otherwise exempt from controls by the provisions of subparts A, F, G, or H of this part'', the phrase ''and the item of equipment is not otherwise exempt from controls by the provisions of subparts A, F, G, H, or JJJ of this part'' shall apply for the purposes of this subpart.

(12) When § 63.149(e)(1) and (e)(2) refer to ''a chemical manufacturing process unit subject to the new source requirements of 40 CFR 63.100(l)(1) or 40 CFR § 63.100 (l)(2),'' the phrase ''a TPPU that is part of a new affected source or that is a new affected source,'' shall apply for the purposes of this subpart.

(13) When the Notification of Compliance Status requirements contained in § 63.152(b) are referred to in §§ 63.138 and 63.146, the Notification of Compliance Status requirements contained in § 63.1335(e)(5) shall apply for the purposes of this subpart. In addition, when §§ 63.132 through 63.149 require that information be reported according to § 63.152(b) in the Notification of Compliance Status, the owner or operator of an affected source shall report the specified information in the Notification of Compliance Status required by § 63.1335(e)(5) for the purposes of this subpart.

(14) When the Periodic Report requirements contained in § 63.152(c) are referred to in § 63.146, the Periodic Report requirements contained in § 63.1335(e)(6) shall apply for the purposes of this subpart. In addition, when §§ 63.132 through 63.149 require that information be reported in the Periodic Reports required in § 63.152(c), the owner or operator of an affected source shall report the specified information in the Periodic Reports required in § 63.1335(e)(6) for the purposes of this subpart.

(15) When § 63.143(f) specifies that owners or operators shall establish the range that indicates proper operation of the treatment process or control device, the owner or operator shall instead comply with the requirements of § 63.1334(b)(1), (c), or (d) for establishing parameter level maximums/minimums for the purposes of this subpart.

(16) When § 63.146(b)(7) and § 63.146(b)(8) require that ''the information on parameter ranges specified in § 63.152(b)(2)'' be reported in the Notification of Compliance Status, owners and operators of affected sources are instead required to report the information on parameter levels as specified in § 63.1335(e)(5)(ii) for the purposes of this subpart.

(17) When the term ''range'' is used in §§ 63.132 through 63.149, the term ''level'' shall apply instead for the purposes of this subpart. This level shall be determined using the procedures specified in § 63.1334.

(18) For the purposes of this subpart, the owner or operator of an affected source is not required to include process wastewater streams that contain styrene when conducting performance tests for the purposes of calculating the required mass removal (RMR) or the actual mass removal (AMR) under the provisions described in § 63.145(f) or § 63.145(g). For purposes of this paragraph, a process wastewater stream is considered to contain styrene if the wastewater stream meets the requirements in paragraph (b)(18) (i), (ii), (iii), (iv), or (v) of this section.

(i) The wastewater stream originates at equipment that produces ABS or ABS latex;

(ii) The wastewater stream originates at equipment that produces EPS;

(iii) The wastewater stream originates at equipment that produces MABS;

(iv) The wastewater stream originates at equipment that produces MBS; or

(v) The wastewater stream originates at equipment that produces SAN.

(19) When the provisions of § 63.139(c)(1)(ii), § 63.145(d)(4), or § 63.145(i)(2) specify that Method 18, 40 CFR part 60, appendix A, shall be used, Method 18 or Method 25A, 40 CFR part 60, appendix A, may be used for the purposes of this subpart. The use of Method 25A, 40 CFR part 60, appendix A, shall conform with the requirements in paragraphs (b)(19)(i) and (b)(19)(ii) of this section.

(i) The organic HAP used as the calibration gas for Method 25A, 40 CFR

part 60, appendix A, shall be the single organic HAP representing the largest percent by volume of the emissions.

(ii) The use of Method 25A, 40 CFR part 60, appendix A, is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(20) In § 63.145(j), instead of the reference to § 63.11(b), and instead of § 63.145(j)(1) and § 63.145(j)(2), the requirements in § 63.1333(e) shall apply.

(21) The owner or operator of a facility which receives a Group 1 wastewater stream, or a residual removed from a Group 1 wastewater stream, for treatment pursuant to § 63.132(g) is subject to the requirements of § 63.132(g) with the differences identified in this section, and is not subject to subpart DD of this part with respect to that material.

(22) When § 63.132(g) refers to ''§§ 63.133 through 63.137'' or ''§§ 63.133 through 63.147'', the provisions in this section 63.1330 shall apply, for the purposes of this subpart.

(c) For each affected source, the owner or operator shall comply with the requirements for maintenance wastewater in § 63.105, except that when § 63.105(a) refers to ''organic HAPs,'' the definition of organic HAP in § 63.1312 shall apply for the purposes of this subpart.

* * * * *

50. Section 63.1331 is amended by:

a. Revising paragraphs (a) introductory text, (a)(2), (a)(4), (a)(5), (a)(6) introductory text, (a)(6)(i), (a)(6)(ii)(A), (a)(6)(ii)(B), (a)(7), (a)(8) introductory text, (a)(10), and (b);

b. Adding paragraphs (a)(6)(iii), (a)(6)(iv), and (a)(11) through (a)(13); and

c. Removing and reserving paragraph (a)(9), to read as follows:

§ 63.1331 Equipment leak provisions.

(a) Except as provided for in paragraphs (b) and (c) of this section, the owner or operator of each affected source shall comply with the requirements of subpart H of this part, with the differences noted in paragraphs (a)(1) through (a)(13) of this section.

* * * * *

(2) The compliance date for the equipment leak provisions contained in this section is provided in § 63.1311. Whenever subpart H of this part refers to the compliance dates specified in any paragraph contained in § 63.100, the compliance dates listed in § 63.1311(d) shall instead apply, for the purposes of this subpart. When § 63.182(c)(4) refers to ''sources subject to subpart F,'' the phrase ''sources subject to this subpart'' shall apply, for the purposes of this subpart. In addition, extensions of compliance dates are addressed by § 63.1311(e) instead of § 63.182(a)(6), for the purposes of this subpart.

* * * * *

(4) As specified in § 63.1335(e)(5), the Notification of Compliance Status required by paragraphs § 63.182(a)(2) and § 63.182(c) shall be submitted within 150 days (rather than 90 days) of the applicable compliance date specified in § 63.1311 for the equipment leak provisions.

(5) The information specified by § 63.182(a)(3) and § 63.182(d) (i.e., Periodic Reports) shall be submitted as part of the Periodic Reports required by § 63.1335(e)(6).

(6) For pumps, valves, connectors, and agitators in heavy liquid service; pressure relief devices in light liquid or heavy liquid service; and instrumentation systems, owners or operators of affected sources producing PET shall comply with the requirements of paragraphs (a)(6)(i) and (a)(6)(ii) of this section instead of with the requirements of § 63.169. Owners or operators of PET affected sources shall comply with all other provisions of subpart H of this part for pumps, valves, connectors, and agitators in heavy liquid service; pressure relief devices in light liquid or heavy liquid service; and instrumentation systems, except as specified in paragraphs (a)(6)(iii) through (a)(6)(iv) of this section.

(i) A leak is determined to be detected if there is evidence of a potential leak found by visual, audible, or olfactory means. Method 21, 40 CFR part 60, appendix A may not be used to determine the presence or absence of a leak.

(ii)(A) When a leak is detected, it shall be repaired as soon as practical, but not later than 15 days after it is detected, except as provided in § 63.171.

(B) The first attempt at repair shall be made no later than 5 days after each leak is detected.

* * * * *

(iii) An owner or operator is not required to develop an initial list of identification numbers as would otherwise be required under § 63.181(b)(1)(i) or § 63.181(b)(4).

(iv) When recording the detection of a leak under § 63.182(d)(1), the owner or operator of an affected source shall comply with paragraphs (a)(6)(iv)(A) through (a)(6)(iv)(B) of this section.

(A) When complying with § 63.181(d)(1), provide an identification number for the leaking equipment at the time of recordkeeping. Further, the owner or operator is not required to record the identification number of the instrument (i.e., Method 21 instrument) because the use of Method 21 is not an acceptable method for determining a leak under this paragraph (a)(6).

(B) An owner or operator is not required to comply with § 63.181(d)(4) which requires a record of the maximum instrument reading measured by Method 21 of 40 CFR part 60, appendix A.

(7) When § 63.166(b)(4)(i) refers to Table 9 of subpart G of this part, the owner or operator is only required to consider organic HAP listed on Table 6 of this subpart for purposes of this subpart, except for ethylene glycol which need not be considered.

(8) When the provisions of subpart H of this part specify that Method 18, 40 CFR part 60, appendix A, shall be used, Method 18 or Method 25A, 40 CFR part 60, appendix A, may be used for the purposes of this subpart. The use of Method 25A, 40 CFR part 60, appendix A, shall conform with the requirements in paragraphs (a)(8)(i) and (a)(8)(ii) of this section.

* * * * *

(9) [Reserved.]

(10) If specific items of equipment, comprising part of a process unit subject to this subpart, are managed by different administrative organizations (e.g., different companies, affiliates, departments, divisions, etc.), those items of equipment may be aggregated with any TPPU within the affected source for all purposes under subpart H of this part, providing there is no delay in achieving the applicable compliance date.

(11) When the terms ''equipment'' and ''equipment leak'' are used in subpart H of this part, the definitions of these terms in § 63.1312 shall apply for the purposes of this subpart.

(12) The phrase ''the provisions of subparts F, I, or JJJ of this part'' shall apply instead of the phrase ''the provisions of subpart F or I of this part'' throughout §§ 63.163 and 63.168, for the purposes of this subpart. In addition, the phrase ''subparts F, I, and JJJ'' shall apply instead of the phrase ''subparts F and I'' in § 63.174(c)(2)(iii), for the purposes of this subpart.

(13) An owner or operator using a flare to comply with the requirements of this section shall conduct a compliance demonstration as specified in § 63.1333(e).

(b) The provisions of this section do not apply to each TPPU producing PET using a process other than a continuous

terephthalic acid (TPA) high viscosity multiple end finisher process that is part of an affected source if all of the equipment leak components subject to this § 63.1331 in the TPPU are either in vacuum service or in heavy liquid service.

(1) Owners and operators of a TPPU exempted under paragraph (b) of this section shall comply with paragraph (b)(1)(i) or (b)(1)(ii) of this section.

(i) Retain information, data, and analyses used to demonstrate that all of the components in the exempted TPPU are either in vacuum service or in heavy liquid service. For components in vacuum service, examples of information that could document this include, but are not limited to, analyses of process stream composition and process conditions, engineering calculations, or process knowledge. For components in heavy liquid service, such documentation shall include an analysis or demonstration that the process fluids do not meet the criteria of ''in light liquid service'' or ''in gas or vapor service.''

(ii) When requested by the Administrator, demonstrate that all of the components in the TPPU are either in vacuum service or in heavy liquid service.

(2) If changes occur at a TPPU exempted under paragraph (b) of this section such that all of the components in the TPPU are no longer either in vacuum service or in heavy liquid service (e.g., by either process changes or the addition of new components), the owner or operator of the affected source shall comply with the provisions of this section for all of the components at the TPPU. The owner or operator shall submit a report within 180 days after the process change is made or the information regarding the process change is known to the owner or operator. This report may be included in the next Periodic Report, as specified in paragraph (a)(5) of this section. A description of the process change shall be submitted with this report.

* * * * *

51. Section 63.1333 is amended by revising the section title and paragraphs (a) introductory text and (a)(1), (a)(2), (a)(4), and (b) introductory text; and adding paragraphs (a)(5) and (e), to read as follows:

§ 63.1333 Additional requirements for performance testing.

(a) Performance testing shall be conducted in accordance with § 63.7 (a)(1), (a)(3), (d), (e)(1), (e)(2), (e)(4), (g), and (h), with the exceptions specified in paragraphs (a)(1) through (a)(5) of this section and the additions specified in paragraphs (b) through (d) of this section. Sections 63.1314 through 63.1330 also contain specific testing requirements.

(1) Performance tests shall be conducted according to the provisions of § 63.7 (e)(1) and (e)(2), except that performance tests shall be conducted at maximum representative operating conditions achievable during one of the time periods described in paragraph (a)(1)(i) of this section, without causing any of the situations described in paragraph (a)(1)(ii) of this section to occur.

(i) The 6-month period that ends 2 months before the Notification of Compliance Status is due, according to § 63.1335(e)(5); or the 6-month period that begins 3 months before the performance test and ends 3 months after the performance test.

(ii) Causing damage to equipment; necessitating that the owner or operator make product that does not meet an existing specification for sale to a customer; or necessitating that the owner or operator make product in excess of demand.

(2) The requirements in § 63.1335(e)(5) should apply instead of the references in § 63.7(g) to the Notification of Compliance Status requirements in § 63.9(h).

* * * * *

(4) The owner or operator shall notify the Administrator of the intention to conduct a performance test at least 30 days before the performance test is scheduled to allow the Administrator the opportunity to have an observer present during the test. If after 30 days notice for an initially scheduled performance test, there is a delay (due to operational problems, etc.) in conducting the scheduled performance test, the owner or operator of an affected facility shall notify the Administrator as soon as possible of any delay in the original test date, either by providing at least 7 days prior notice of the rescheduled date of the performance test, or by arranging a rescheduled date with the Administrator by mutual agreement.

(5) Performance tests shall be performed no later than 150 days after the compliance dates specified in this subpart (i.e., in time for the results to be included in the Notification of Compliance Status), rather than according to the time periods in § 63.7(a)(2) of subpart A of this part.

(b) Each owner or operator of an existing affected source producing MBS complying with § 63.1315(b)(2) shall determine compliance with the mass emission per mass product standard by using Equation 49 of this subpart.

$$ER_{MBS} = \frac{\sum_{i=1}^{n} E_i}{PP_M} \qquad \text{[Eq. 49]}$$

Where:

ER_{MBS}=Emission rate of organic HAP or TOC from continuous process vents, kg/Mg product.

E_i=Emission rate of organic HAP or TOC from continuous process vent i as calculated using the procedures specified in § 63.116(c)(4), kg/month.

PP_M=Amount of polymer produced in one month as determined by the procedures specified in § 63.1318(b)(1)(ii), Mg/month.

n=Number of continuous process vents.

When determining E_i, when the provisions of § 63.116(c)(4) specify that Method 18, 40 CFR part 60, appendix A, shall be used, Method 18 or Method 25A, 40 CFR part 60, appendix A, may be used for the purposes of this subpart. The use of Method 25A, 40 CFR part 60, appendix A, shall conform with the requirements in paragraphs (b)(1) and (b)(2) of this section.

(e) Notwithstanding any other provision of this subpart, if an owner or operator of an affected source uses a flare to comply with any of the requirements of this subpart, the owner or operator shall comply with paragraphs (e)(1) through (e)(3) of this section. The owner or operator is not required to conduct a performance test to determine percent emission reduction or outlet organic HAP or TOC concentration. If a compliance demonstration has been conducted previously for a flare, using the techniques specified in paragraphs (e)(1)

through (e)(3) of this section, that compliance demonstration may be used to satisfy the requirements of this paragraph 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) Conduct a visible emission test using the techniques specified in § 63.11(b)(4);

(2) Determine the net heating value of the gas being combusted, using the techniques specified in § 63.11(b)(6); and

(3) Determine the exit velocity using the techniques specified in either § 63.11(b)(7)(i) (and § 63.11(b)(7)(iii), where applicable) or § 63.11(b)(8), as appropriate.

52. Section 63.1334 is amended by:

a. Revising paragraphs (a), (b) introductory text, (b)(3) introductory text, (b)(3)(i)(A) through (b)(3)(i)(D), (b)(3)(ii), (c), (d), (f)(1) introductory text, (f)(1)(ii), (f)(1)(iii), (f)(2) introductory text, and (f)(2)(ii);

b. Removing and reserving paragraphs (b)(1) and (e);

c. Removing paragraph (b)(3)(i)(E); and

d. Adding paragraphs (f)(1)(v) and (f)(3) through (f)(7), to read as follows:

§ 63.1334 Parameter monitoring levels and excursions.

(a) *Establishment of parameter monitoring levels.* The owner or operator of a control or recovery device that has one or more parameter monitoring level requirements specified under this subpart shall establish a maximum or minimum level for each measured parameter. If a performance test is required by this subpart for a control device, the owner or operator shall use the procedures in either paragraph (b) or (c) of this section to establish the parameter monitoring level(s). If a performance test is not required by this subpart for a control device, the owner or operator may use the procedures in paragraph (b), (c) or (d) of this section to establish the parameter monitoring level(s). When using the procedures specified in paragraph (c) or (d) of this section, the owner or operator shall submit the information specified in § 63.1335(e)(3)(vii) for review and approval as part of the Precompliance Report.

(1) The owner or operator shall operate control and recovery devices such that the daily average of monitored parameters remains above the minimum established level or below the maximum established level, except as otherwise stated in this subpart.

(2) As specified in § 63.1335(e)(5), all established levels, along with their supporting documentation and the definition of an operating day, shall be submitted as part of the Notification of Compliance Status.

(3) Nothing in this section shall be construed to allow a monitoring parameter excursion caused by an activity that violates other applicable provisions of subpart A, F, G, or H of this part.

(b) *Establishment of parameter monitoring levels based exclusively on performance tests.* In cases where a performance test is required by this subpart, or the owner or operator of the affected source elects to do a performance test in accordance with the provisions of this subpart, and an owner or operator elects to establish a parameter monitoring level for a control, recovery, or recapture device based exclusively on parameter values measured during the performance test, the owner or operator of the affected source shall comply with the procedures in paragraphs (b)(1) through (b)(4) of this section, as applicable.

(1) [Reserved.]

* * * * *

(3) *Batch process vents.* The monitoring level(s) shall be established using the procedures specified in either paragraph (b)(3)(i) or (b)(3)(ii) of this section. The procedures specified in this paragraph (b)(3) may only be used if the batch emission episodes, or portions thereof, selected to be controlled were tested, and monitoring data were collected, during the entire period in which emissions were vented to the control device, as specified in § 63.1325(c)(1)(i). If the owner or operator chose to test only a portion of the batch emission episode, or portion thereof, selected to be controlled, the procedures in paragraph (c) of this section shall be used.

(i) * * *

(A) The average monitored parameter value shall be calculated for each batch emission episode, or portion thereof, in the batch cycle selected to be controlled. The average shall be based on all values measured during the required performance test.

(B) If the level to be established is a maximum operating parameter, the level shall be defined as the minimum of the average parameter values of the batch emission episodes, or portions thereof, in the batch cycle selected to be controlled (i.e., identify the emission episode, or portion thereof, which requires the lowest parameter value in order to assure compliance. The average parameter value that is necessary to assure compliance for that emission episode, or portion thereof, shall be the level for all emission episodes, or portions thereof, in the batch cycle, that are selected to be controlled).

(C) If the level to be established is a minimum operating parameter, the level shall be defined as the maximum of the average parameter values of the batch emission episodes, or portions thereof, in the batch cycle selected to be controlled (i.e., identify the emission episode, or portion thereof, which requires the highest parameter value in order to assure compliance. The average parameter value that is necessary to assure compliance for that emission episode, or portion thereof, shall be the level for all emission episodes, or portions thereof, in the batch cycle, that are selected to be controlled).

(D) Alternatively, an average monitored parameter value shall be calculated for the entire batch cycle based on all values measured during each batch emission episode, or portion thereof, selected to be controlled.

(ii) Instead of establishing a single level for the batch cycle, as described in paragraph (b)(3)(i) of this section, an owner or operator may establish separate levels for each batch emission episode, or portion thereof, selected to be controlled. Each level shall be determined as specified in paragraph (b)(3)(i)(A) of this section.

* * * * *

(c) *Establishment of parameter monitoring levels based on performance tests, supplemented by engineering assessments and/or manufacturer's recommendations.* In cases where a performance test is required by this subpart, or the owner or operator elects to do a performance test in accordance with the provisions of this subpart, and an owner or operator elects to establish a parameter monitoring level for a control, recovery, or recapture device under this paragraph (c), the owner or operator shall supplement the parameter values measured during the performance test with engineering assessments and/or manufacturer's recommendations. Performance testing is not required to be conducted over the entire range of expected parameter values.

(d) *Establishment of parameter monitoring based on engineering assessments and/or manufacturer's recommendations.* In cases where a performance test is not required by this subpart and an owner or operator elects to establish a parameter monitoring level for a control, recovery, or

recapture device under this paragraph (d), the determination of the parameter monitoring level shall be based exclusively on engineering assessments and/or manufacturer's recommendations.

(e) [Reserved.]

(f) *Parameter monitoring excursion definitions.* (1) With respect to storage vessels (where the applicable monitoring plan specifies continuous monitoring), continuous process vents, aggregate batch vent streams, and process wastewater streams, an excursion means any of the three cases listed in paragraphs (f)(1)(i) through (f)(1)(iii) of this section. For a control or recovery device where multiple parameters are monitored, if one or more of the parameters meets the excursion criteria in paragraphs (f)(1)(i) through (f)(1)(iii) of this section, this is considered a single excursion for the control or recovery device. For each excursion, the owner or operator shall be deemed out of compliance with the provisions of this subpart, except as provided in paragraph (g) of this section.

* * * * *

(ii) When the period of control or recovery device operation, with the exception noted in paragraph (f)(1)(v) of this section, is 4 hours or greater in an operating day, and monitoring data are insufficient, as defined in paragraph (f)(1)(iv) of this section, to constitute a valid hour of data for at least 75 percent of the operating hours.

(iii) When the period of control or recovery device operation, with the exception noted in paragraph (f)(1)(v) of this section, is less than 4 hours in an operating day and more than two of the hours during the period of operation do not constitute a valid hour of data due to insufficient monitoring data, as defined in paragraph (f)(1)(iv) of this section.

* * * * *

(v) The periods listed in paragraphs (f)(1)(v)(A) through (f)(1)(v)(E) of this section are not considered to be part of the period of control or recovery device operation, for the purposes of paragraphs (f)(1)(ii) and (f)(1)(iii) of this section.

(A) Monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments;

(B) Start-ups;

(C) Shutdowns;

(D) Malfunctions; or

(E) Periods of non-operation of the affected source (or portion thereof), resulting in cessation of the emissions to which the monitoring applies.

(2) With respect to batch process vents, an excursion means one of the two cases listed in paragraphs (f)(2)(i) and (f)(2)(ii) of this section. For a control device where multiple parameters are monitored, if one or more of the parameters meets the excursion criteria in either paragraph (f)(2)(i) or (f)(2)(ii) of this section, this is considered a single excursion for the control device. For each excursion, the owner or operator shall be deemed out of compliance with the provisions of this subpart, except as provided in paragraph (g) of this section.

* * * * *

(ii) When monitoring data are insufficient for an operating day. Monitoring data shall be considered insufficient when measured values are not available for at least 75 percent of the 15-minute periods when batch emission episodes selected to be controlled are being vented to the control device during the operating day, using the procedures specified in paragraphs (f)(2)(ii)(A) through (f)(2)(ii)(D) of this section.

(A) Determine the total amount of time during the operating day when batch emission episodes selected to be controlled are being vented to the control device.

(B) Subtract the time during the periods listed in paragraphs (f)(2)(ii)(B)(*1*) through (f)(2)(ii)(B)(*4*) of this section from the total amount of time determined in paragraph (f)(2)(ii)(A) of this section, to obtain the operating time used to determine if monitoring data are insufficient.

(*1*) Monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments;

(*2*) Start-ups;

(*3*) Shutdowns; or

(*4*) Malfunctions.

(C) Determine the total number of 15-minute periods in the operating time used to determine if monitoring data are insufficient, as was determined in accordance with paragraph (f)(2)(ii)(B) of this section.

(D) If measured values are not available for at least 75 percent of the total number of 15-minute periods determined in paragraph (f)(2)(ii)(C) of this section, the monitoring data are insufficient for the operating day.

(3) For storage vessels where the applicable monitoring plan does not specify continuous monitoring, an excursion is defined in paragraph (f)(3)(i) or (ii) of this section, as applicable. For a control or recovery device where multiple parameters are monitored, if one or more of the parameters meets the excursion criteria, this is considered a single excursion for the control or recovery device. For each excursion, the owner or operator shall be deemed out of compliance with the provisions of this subpart, except as provided in paragraph (g) of this section.

(i) If the monitoring plan specifies monitoring a parameter and recording its value at specific intervals (such as every 15 minutes or every hour), either of the cases listed in paragraph (f)(3)(i)(A) or (f)(3)(i)(B) of this section is considered a single excursion for the control device. For each excursion, the owner or operator shall be deemed out of compliance with the provisions of this subpart, except as provided in paragraph (g) of this section.

(A) When the average value of one or more parameters, averaged over the duration of the filling period for the storage vessel, is above the maximum level or below the minimum level established for the given parameters.

(B) When monitoring data are insufficient. Monitoring data shall be considered insufficient when measured values are not available for at least 75 percent of the specific intervals at which parameters are to be monitored and recorded, according to the storage vessel's monitoring plan, during the filling period for the storage vessel.

(ii) If the monitoring plan does not specify monitoring a parameter and recording its value at specific intervals (for example, if the relevant operating requirement is to exchange a disposable carbon canister before expiration of its rated service life), the monitoring plan shall define an excursion in terms of the relevant operating requirement.

(4) With respect to continuous process vents complying with the mass emissions per mass product requirements specified in § 63.1316(b)(1)(i)(A), (b)(1)(ii), (b)(2)(i), (b)(2)(ii), or (c)(1)(i), an excursion has occurred when the mass emission rate calculated as specified in § 63.1318(c) exceeds the appropriate mass emissions per mass product requirement. For each excursion, the owner or operator shall be deemed out of compliance with the provisions of this subpart, except as provided in paragraph (g) of this section.

(5) With respect to continuous process vents complying with the temperature limits for final condensers specified in § 63.1316(b)(1)(i)(B) or (c)(1)(ii), an excursion has occurred when the daily average exit temperature exceeds the appropriate condenser temperature limit. For each excursion, the owner or operator shall be deemed out of compliance with the provisions of this subpart, except as provided in paragraph (g) of this section. The periods listed in paragraphs (f)(5)(i)

through (f)(5)(v) of this section are not considered to be part of the period of operation for the condenser for purposes of determining the daily average exit temperature.

(i) Monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments;

(ii) Start-ups;

(iii) Shutdowns;

(iv) Malfunctions; or

(v) Periods of non-operation of the affected source (or portion thereof), resulting in cessation of the emissions to which the monitoring applies.

(6) With respect to new affected sources producing SAN using a batch process, an excursion has occurred when the percent reduction calculated using the procedures specified in § 63.1333(c) is less than 84 percent. For each excursion, the owner or operator shall be deemed out of compliance with the provisions of this subpart, except as provided in paragraph (g) of this section. The periods listed in paragraphs (f)(6)(i) through (f)(6)(v) of this section are not considered to be part of the period of control or recovery device operation for purposes of determining the percent reduction.

(i) Monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments;

(ii) Start-ups;

(iii) Shutdowns;

(iv) Malfunctions; or

(v) Periods of non-operation of the affected source (or portion thereof), resulting in cessation of the emissions to which the monitoring applies.

(7) With respect to continuous process vents complying with the mass emissions per mass product requirement specified in § 63.1315(b)(2), an excursion has occurred when the mass emission rate calculated as specified in § 63.1333(b) exceeds the mass emissions per mass product requirement specified in § 63.1315(b)(2). For each excursion, the owner or operator shall be deemed out of compliance with the provisions of this subpart, except as provided in paragraph (g) of this section.

* * * * *

53. Section 63.1335 is amended by:

a. Revising paragraphs (a), (b)(1), (b)(2), (d) introductory text, (d)(2), (d)(3), (d)(6), (d)(7), (d)(8), (d)(9), (e) introductory text, (e)(1), (e)(2), (e)(3), (e)(4) introductory text, (e)(4)(i), (e)(4)(ii) introductory text, (e)(4)(ii)(B), (e)(4)(ii)(D), (e)(4)(ii)(F)(*2*), (e)(4)(ii)(F)(*4*), (e)(4)(ii)(F)(*5*), (e)(4)(ii)(H)(*2*), (e)(4)(ii)(J)(*2*), (e)(4)(ii)(L)(*2*), (e)(4)(ii)(N), (e)(4)(iii), (e)(4)(iv), (e)(4)(iv)(A) introductory text, (e)(4)(iv)(B) introductory text, (e)(4)(iv)(C), (e)(5) introductory text, (e)(5)(i) introductory text, (e)(5)(i)(A), (e)(5)(ii) introductory text, (e)(5)(iv), (e)(5)(vi) through (e)(5)(viii), (e)(6) introductory text, (e)(6)(i), (e)(6)(ii), (e)(6)(iii)(B), (e)(6)(iii)(D) introductory text, (e)(6)(iii)(D)(*2*), (e)(6)(iii)(D)(*3*), (e)(6)(iv), (e)(6)(v)(B), (e)(6)(vi) through (e)(6)(xi), (e)(7) introductory text, (e)(7)(ii), (e)(8), (f) introductory text, (f)(3) introductory text, (g) introductory text, (g)(3) introductory text, (g)(3)(i)(A), (g)(4), (h) introductory text, (h)(1) introductory text, (h)(1)(ii)(B), (h)(1)(iv), (h)(1)(vi) introductory text, (h)(1)(vi)(B), (h)(1)(vi)(C), (h)(2)(i), and (h)(2)(iii);

b. Removing paragraph (d)(10);

c. Removing and reserving paragraphs (c), (d)(4), (d)(5), and (e)(6)(iii)(C); and

d. Adding paragraphs (e)(4)(iv)(D), (e)(5)(ix) through (e)(5)(xi), (e)(6)(iii)(D)(*4*), (e)(6)(xii), (e)(7)(iii), (e)(7)(iv), and (h)(1)(vi)(D), to read as follows:

§ 63.1335 General recordkeeping and reporting provisions.

(a) *Data retention.* Unless otherwise specified in this subpart, the owner or operator of an affected source shall keep copies of all applicable records and reports required by this subpart for at least 5 years, as specified in paragraph (a)(1) of this section, with the exception listed in paragraph (a)(2) of this section.

(1) All applicable records shall be maintained in such a manner that they can be readily accessed. The most recent 6 months of records shall be retained on site or shall be accessible from a central location by computer or other means that provides access within 2 hours after a request. The remaining 4 and one-half years of records may be retained offsite. Records may be maintained in hard copy or computer-readable form including, but not limited to, on paper, microfilm, computer, floppy disk, magnetic tape, or microfiche.

(2) If an owner or operator submits copies of reports to the appropriate EPA Regional Office, the owner or operator is not required to maintain copies of reports. If the EPA Regional Office has waived the requirement of § 63.10(a)(4)(ii) for submittal of copies of reports, the owner or operator is not required to maintain copies of those reports.

(b) * * *

(1) *Start-up, shutdown, and malfunction plan.* The owner or operator of an affected source shall develop and implement a written start-up, shutdown, and malfunction plan as specified in § 63.6(e)(3). This plan shall describe, in detail, procedures for operating and maintaining the affected source during periods of start-up, shutdown, and malfunction and a program for corrective action for malfunctioning process and air pollution control equipment used to comply with this subpart. 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, through the Precompliance Report or a supplement to the Precompliance Report, that the monitoring system would be damaged or destroyed if it were not shut down during the start-up, shutdown, or malfunction. The affected source shall keep the start-up, shutdown, and malfunction plan on-site. Records associated with the plan shall be kept as specified in paragraphs (b)(1)(i)(A) through (b)(1)(i)(C) of this section. Reports related to the plan shall be submitted as specified in paragraph (b)(1)(ii) of this section.

(i) *Records of start-up, shutdown, and malfunction.* The owner or operator shall keep the records specified in paragraphs (b)(1)(i)(A) through (b)(1)(i)(C) of this section.

(A) 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 § 63.1310(j)(4)) occur.

(B) For each start-up, shutdown, or malfunction during which excess emissions (as defined in § 63.1310(j)(4)) occur, records reflecting whether the procedures specified in the affected source's start-up, shutdown, and malfunction plan were followed, and documentation of actions taken that are not consistent with the plan. For example, if a start-up, shutdown, and malfunction plan includes procedures for routing a 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.

(C) Records specified in paragraphs (b)(1)(i)(A) through (b)(1)(i)(B) of this section are not required if they pertain solely to Group 2 emission points that are not included in an emissions average.

(ii) *Reports of start-up, shutdown, and malfunction.* For the purposes of this

subpart, the semiannual start-up, shutdown, and malfunction reports shall be submitted on the same schedule as the Periodic Reports required under paragraph (e)(6) of this section instead of being submitted on the schedule specified in § 63.10(d)(5)(i). Said reports shall include the information specified in paragraphs (b)(1)(i)(A) through (b)(1)(i)(B) of this section and shall contain the name, title, and signature of the owner or operator or other responsible official who is certifying its accuracy.

(2) *Application for approval of construction or reconstruction.* For new affected sources, each owner or operator shall comply with the provisions in § 63.5 regarding construction and reconstruction, excluding the provisions specified in § 63.5(d)(1)(ii)(H), (d)(1)(iii), (d)(2), and (d)(3)(ii).

(c) [Reserved.]

(d) *Recordkeeping and documentation.* Owners or operators required to keep continuous records shall keep records as specified in paragraphs (d)(1) through (d)(7) of this section, unless an alternative recordkeeping system has been requested and approved as specified in paragraph (g) of this section, and except as provided in paragraph (h) of this section. If a monitoring plan for storage vessels pursuant to § 63.1314(a)(9) requires continuous records, the monitoring plan shall specify which provisions, if any, of paragraphs (d)(1) through (d)(7) of this section apply. As described in § 63.1314(a)(9), certain storage vessels are not required to keep continuous records as specified in this paragraph. Owners and operators of such storage vessels shall keep records as specified in the monitoring plan required by § 63.1314(a)(9). Paragraphs (d)(8) and (d)(9) of this section specify documentation requirements.

* * * * *

(2) The owner or operator shall record either each measured data value or block average values for 1 hour or shorter periods calculated from all measured data values during each period. If values are measured more frequently than once per minute, a single value for each minute may be used to calculate the hourly (or shorter period) block average instead of all measured values. Owners or operators of batch process vents shall record each measured data value.

(3) Daily average (or batch cycle daily average) values of each continuously monitored parameter shall be calculated for each operating day as specified in paragraphs (d)(3)(i) through (d)(3)(ii) of this section, except as specified in paragraphs (d)(6) and (d)(7) of this section.

(i) The daily average value or batch cycle daily average shall be calculated as the average of all parameter values recorded during the operating day, except as specified in paragraph (d)(7) of this section. For batch process vents, as specified in § 63.1326(e)(2)(i), only parameter values measured during those batch emission episodes, or portions thereof, in the batch cycle that the owner or operator has chosen to control shall be used to calculate the average. The calculated average shall cover a 24-hour period if operation is continuous, or the number of hours of operation per operating day if operation is not continuous.

(ii) The operating day shall be the period the owner or operator specifies in the operating permit or the Notification of Compliance Status for purposes of determining daily average values or batch cycle daily average values of monitored parameters.

(4) [Reserved.]

(5) [Reserved.]

(6) *Records required when all recorded values are within the established limits.* If all recorded values for a monitored parameter during an operating day are above the minimum level or below the maximum level established in the Notification of Compliance Status or operating permit, the owner or operator may record that all values were above the minimum level or below the maximum level rather than calculating and recording a daily average (or batch cycle daily average) for that operating day.

(7) Monitoring data recorded during periods identified in paragraphs (d)(7)(i) through (d)(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 or recovery 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 affected source (or portion thereof), resulting in cessation of the emissions to which the monitoring applies.

(8) 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.

(9) The owner or operator of an affected source granted a waiver under § 63.10(f) shall maintain the information, if any, specified by the Administrator as a condition of the waiver of recordkeeping or reporting requirements.

(e) *Reporting and notification.* In addition to the reports and notifications required by subpart A of this part as specified in Table 1 of this subpart, the owner or operator of an affected source shall prepare and submit the reports listed in paragraphs (e)(3) through (e)(8) of this section, as applicable. All reports required by this subpart, and the schedule for their submittal, are listed in Table 9 of this subpart.

(1) Owners and operators shall not be in violation of the reporting requirements of this subpart for failing to submit information required to be included in a specified report if the owner or operator meets the requirements in paragraphs (e)(1)(i) through (e)(1)(iii) of this section. Examples of circumstances where this paragraph may apply include information related to newly-added equipment or emission points, changes in the process, changes in equipment required or utilized for compliance with the requirements of this subpart, or changes in methods or equipment for monitoring, recordkeeping, or reporting.

(i) The information was not known in time for inclusion in the report specified by this subpart;

(ii) The owner or operator has been diligent in obtaining the information; and

(iii) The owner or operator submits a report according to the provisions of paragraphs (e)(1)(iii)(A) through (e)(1)(iii)(C) of this section.

(A) If this subpart expressly provides for supplements to the report in which the information is required, the owner or operator shall submit the information as a supplement to that report. The information shall be submitted no later than 60 days after it is obtained, unless otherwise specified in this subpart.

(B) If this subpart does not expressly provide for supplements, but the owner or operator must submit a request for revision of an operating permit pursuant to part 70 or part 71, due to circumstances to which the information pertains, the owner or operator shall submit the information with the request for revision to the operating permit.

(C) In any case not addressed by paragraph (e)(1)(iii)(A) or (e)(1)(iii)(B) of

this paragraph, the owner or operator shall submit the information with the first Periodic Report, as required by this subpart, which has a submission deadline at least 60 days after the information is obtained.

(2) All reports required under this subpart shall be sent to the Administrator at the appropriate address listed in § 63.13. If acceptable to both the Administrator and the owner or operator of an affected source, reports may be submitted on electronic media.

(3) *Precompliance Report.* Owners or operators of affected sources requesting an extension for compliance; requesting approval to use alternative monitoring parameters, alternative continuous monitoring and recordkeeping, or alternative controls; requesting approval to use engineering assessment to estimate emissions from a batch emissions episode, as described in § 63.1323(b)(6)(i)(C); wishing to establish parameter monitoring levels according to the procedures contained in § 63.1334(c) or (d); or requesting approval to incorporate a provision for ceasing to collect monitoring data, during a start-up, shutdown, or malfunction, into the start-up, shutdown, and malfunction plan, when that monitoring equipment would be damaged if it did not cease to collect monitoring data, as permitted under § 63.1310(j)(3), shall submit a Precompliance Report according to the schedule described in paragraph (e)(3)(i) of this section. The Precompliance Report shall contain the information specified in paragraphs (e)(3)(ii) through (e)(3)(viii) of this section, as appropriate.

(i) *Submittal dates.* The Precompliance Report shall be submitted to the Administrator no later than 12 months prior to the compliance date. Unless the Administrator objects to a request submitted in the Precompliance Report within 45 days after its receipt, the request shall be deemed approved. For new affected sources, the Precompliance Report shall be submitted to the Administrator with the application for approval of construction or reconstruction required in paragraph (b)(2) of this section. Supplements to the Precompliance Report may be submitted as specified in paragraph (e)(3)(ix) of this section.

(ii) A request for an extension for compliance, as specified in § 63.1311(e), may be submitted in the Precompliance Report. The request for a compliance extension shall include the data outlined in § 63.6(i)(6)(i)(A), (B), and (D), as required in § 63.1311(e)(1).

(iii) The alternative monitoring parameter information required in paragraph (f) of this section shall be submitted in the Precompliance Report if, for any emission point, the owner or operator of an affected source seeks to comply through the use of a control technique other than those for which monitoring parameters are specified in this subpart or in subpart G of this part or seeks to comply by monitoring a different parameter than those specified in this subpart or in subpart G of this part.

(iv) If the affected source seeks to comply using alternative continuous monitoring and recordkeeping as specified in paragraph (g) of this section, the owner or operator shall submit a request for approval in the Precompliance Report.

(v) The owner or operator shall report the intent to use alternative controls to comply with the provisions of this subpart in the Precompliance Report. The Administrator may deem alternative controls to be equivalent to the controls required by the standard, under the procedures outlined in § 63.6(g).

(vi) If a request for approval to use engineering assessment to estimate emissions from a batch emissions episode, as described in § 63.1323(b)(6)(i)(C) is being made, the information required by § 63.1323(b)(6)(ii)(B) shall be submitted in the Precompliance Report.

(vii) If an owner or operator establishes parameter monitoring levels according to the procedures contained in § 63.1334(c) or (d), the following information shall be submitted in the Precompliance Report:

(A) Identification of which procedures (i.e., § 63.1334(c) or (d)) are to be used; and

(B) A description of how the parameter monitoring level is to be established. If the procedures in § 63.1334(c) are to be used, a description of how performance test data will be used shall be included.

(viii) If the owner or operator is requesting approval to incorporate a provision for ceasing to collect monitoring data, during a start-up, shutdown, or malfunction, into the start-up, shutdown, and malfunction plan, when that monitoring equipment would be damaged if it did not cease to collect monitoring data, the information specified in paragraphs (e)(3)(viii)(A) and (B) shall be supplied in the Precompliance Report or in a supplement to the Precompliance Report. The Administrator shall evaluate the supporting documentation and shall approve the request only if, in the Administrator's judgment, the specific monitoring equipment would be damaged by the contemporaneous start-up, shutdown, or malfunction.

(A) Documentation supporting a claim that the monitoring equipment would be damaged by the contemporaneous start-up, shutdown, or malfunction; and

(B) A request to incorporate such a provision for ceasing to collect monitoring data during a start-up, shutdown, or malfunction, into the start-up, shutdown, and malfunction plan.

(ix) Supplements to the Precompliance Report may be submitted as specified in paragraphs (e)(3)(ix)(A) or (e)(3)(ix)(B) of this section. Unless the Administrator objects to a request submitted in a supplement to the Precompliance Report within 45 days after its receipt, the request shall be deemed approved.

(A) Supplements to the Precompliance Report may be submitted to clarify or modify information previously submitted.

(B) Supplements to the Precompliance Report may be submitted to request approval to use alternative monitoring parameters, as specified in paragraph (e)(3)(iii) of this section; to use alternative continuous monitoring and recordkeeping, as specified in paragraph (e)(3)(iv) of this section; to use alternative controls, as specified in paragraph (e)(3)(v) of this section; to use engineering assessment to estimate emissions from a batch emissions episode, as specified in paragraph (e)(3)(vi) of this section; to establish parameter monitoring levels according to the procedures contained in § 63.1334(c) or (d), as specified in paragraph (e)(3)(vii) of this section; or to include a provision for ceasing to collect monitoring data during a start-up, shutdown, or malfunction, in the start-up, shutdown, and malfunction plan, when that monitoring equipment would be damaged if it did not cease to collect monitoring data, as specified in paragraph (e)(3)(viii) of this section.

(4) *Emissions Averaging Plan.* For all existing affected sources using emissions averaging, an Emissions Averaging Plan shall be submitted for approval according to the schedule and procedures described in paragraph (e)(4)(i) of this section. The Emissions Averaging Plan shall contain the information specified in paragraph (e)(4)(ii) of this section, unless the information required in paragraph (e)(4)(ii) of this section is submitted with an operating permit application. An owner or operator of an affected source who submits an operating permit application instead of an Emissions Averaging Plan shall submit the information specified in paragraph (e)(8)

of this section. In addition, a supplement to the Emissions Averaging Plan, as required under paragraph (e)(4)(iii) of this section, is to be submitted whenever additional alternative controls or operating scenarios may be used to comply with this subpart. Updates to the Emissions Averaging Plan shall be submitted in accordance with paragraph (e)(4)(iv) of this section.

(i) *Submittal and approval.* The Emissions Averaging Plan shall be submitted no later than 18 months prior to the compliance date, and it is subject to Administrator approval. The Administrator shall determine within 120 days whether the Emissions Averaging Plan submitted presents sufficient information. The Administrator shall either approve the Emissions Averaging Plan, request changes, or request that the owner or operator submit additional information. Once the Administrator receives sufficient information, the Administrator shall approve, disapprove, or request changes to the plan within 120 days.

(ii) *Information required.* The Emissions Averaging Plan shall contain the information listed in paragraphs (e)(4)(ii)(A) through (e)(4)(ii)(N) of this section for all emission points included in an emissions average.

* * * * *

(B) The required information shall include the projected emission debits and credits for each emission point and the sum for the emission points involved in the average calculated according to § 63.1332. The projected credits shall be greater than or equal to the projected debits, as required under § 63.1332(e)(3).

* * * * *

(D) The required information shall include the specific identification of each emission point affected by a pollution prevention measure. To be considered a pollution prevention measure, the criteria in § 63.1332(j)(1) shall be met. If the same pollution prevention measure reduces or eliminates emissions from multiple emission points in the average, the owner or operator shall identify each of these emission points.

* * * * *

(F) * * *

(*2*) The required documentation shall include the estimated values of all parameters needed for input to the emission debit and credit calculations in § 63.1332(g) and (h). These parameter values shall be specified in the affected source's Emissions Averaging Plan (or operating permit) as enforceable operating conditions. Changes to these parameters shall be reported as required by paragraph (e)(4)(iv) of this section.

* * * * *

(*4*) The required documentation shall include the anticipated nominal efficiency if a control technology achieving a greater percent emission reduction than the efficiency of the reference control technology is or will be applied to the emission point. The procedures in § 63.1332(i) shall be followed to apply for a nominal efficiency, and the report specified in paragraph (e)(7)(ii) of this section shall be submitted with the Emissions Averaging Plan as specified in paragraph (e)(7)(ii)(A) of this section.

(*5*) The required documentation shall include the monitoring plan specified in § 63.122(b), to include the information specified in § 63.120(d)(2)(i) and in either § 63.120(d)(2)(ii) or (d)(2)(iii) for each storage vessel controlled with a closed-vent system using a control device other than a flare.

* * * * *

(H) * * *

(*2*) The required documentation shall include the estimated values of all parameters needed for input to the emission debit and credit calculations in § 63.1332(g) and (h). These parameter values shall be specified in the affected source's Emissions Averaging Plan (or operating permit) as enforceable operating conditions. Changes to these parameters shall be reported as required by paragraph (e)(4)(iv) of this section.

* * * * *

(J) * * *

(*2*) The required documentation shall include the estimated values of all parameters needed for input to the emission debit and credit calculations in § 63.1332(g) and (h). These parameter values shall be specified in the affected source's Emissions Averaging Plan (or operating permit) as enforceable operating conditions. Changes to these parameters shall be reported as required by paragraph (e)(4)(iv) of this section.

* * * * *

(L) * * *

(*2*) The required documentation shall include the estimated values of all parameters needed for input to the wastewater emission credit and debit calculations in § 63.1332(g) and (h). These parameter values shall be specified in the affected source's Emissions Averaging Plan (or operating permit) as enforceable operating conditions. Changes to these parameters shall be reported as required by paragraph (e)(4)(iv) of this section.

* * * * *

(N) The required information shall include documentation of the data required by § 63.1332(k). The documentation shall demonstrate that the emissions from the emission points proposed to be included in the average will not result in greater hazard or, at the option of the Administrator, greater risk to human health or the environment than if the emission points were not included in an emissions average.

(iii) *Supplement to Emissions Averaging Plan.* The owner or operator required to prepare an Emissions Averaging Plan under paragraph (e)(4) of this section shall also prepare a supplement to the Emissions Averaging Plan for any additional alternative controls or operating scenarios that may be used to achieve compliance.

(iv) *Updates to Emissions Averaging Plan.* The owner or operator of an affected source required to submit an Emissions Averaging Plan under paragraph (e)(4) of this section shall also submit written updates of the Emissions Averaging Plan to the Administrator for approval under the circumstances described in paragraphs (e)(4)(iv)(A) through (e)(4)(iv)(C) of this section unless the relevant information has been included and submitted in an operating permit application or amendment.

(A) The owner or operator who plans to make a change listed in either paragraph (e)(4)(iv)(A)(*1*) or (e)(4)(iv)(A)(*2*) of this section shall submit an Emissions Averaging Plan update at least 120 days prior to making the change.

* * * * *

(B) The owner or operator who has made a change as defined in paragraph (e)(4)(iv)(B)(*1*) or (e)(4)(iv)(B)(*2*) of this section shall submit an Emissions Averaging Plan update within 90 days after the information regarding the change is known to the affected source. The update may be submitted in the next quarterly periodic report if the change is made after the date the Notification of Compliance Status is due.

* * * * *

(C) The owner or operator who plans to make a change listed in either paragraph (e)(4)(iv)(A)(*1*) or (e)(4)(iv)(A)(*2*) of this section shall submit an Emissions Averaging Plan update at least 120 days prior to making the change.

(D) The Administrator shall approve or request changes to the Emissions Averaging Plan update within 120 days of receipt of sufficient information regarding the change for emission points included in emissions averages.

(5) *Notification of Compliance Status.* For existing and new affected sources, a Notification of Compliance Status shall be submitted. For equipment leaks subject to § 63.1331, the owner or operator shall submit the information required in § 63.182(c) in the Notification of Compliance Status within 150 days after the first applicable compliance date for equipment leaks in the affected source, and an update shall be provided in the first Periodic Report that is due at least 150 days after each subsequent applicable compliance date for equipment leaks in the affected source. For all other emission points, including heat exchange systems, the Notification of Compliance Status shall contain the information listed in paragraphs (e)(5)(i) through (e)(5)(xi) of this section, as applicable, and shall be submitted no later than 150 days after the compliance dates specified in this subpart.

(i) The results of any emission point group determinations, process section applicability determinations, performance tests, inspections, continuous monitoring system performance evaluations, any other information used to demonstrate compliance, values of monitored parameters established during performance tests, and any other information required to be included in the Notification of Compliance Status under §§ 63.1311(l), 63.122, and 63.1314 for storage vessels, § 63.117 for continuous process vents, § 63.146 for process wastewater, §§ 63.1316 through 63.1320 for continuous process vents subject to § 63.1316, § 63.1327 for batch process vents, § 63.1329 for process contact cooling towers, and § 63.1332 for emission points included in an emissions average. In addition, the owner or operator of an affected source shall comply with paragraph (e)(5)(i)(A) and (e)(5)(i)(B) of this section.

(A) For performance tests, group determinations, and process section applicability determinations that are based on measurements, the Notification of Compliance Status shall include one complete test report, as described in paragraph (e)(5)(i)(B) of this section, for each test method used for a particular kind of emission point. For additional tests performed for the same kind of emission point using the same method, the results and any other information, from the test report, that is requested on a case-by-case basis by the Administrator shall be submitted, but a complete test report is not required.

(ii) For each monitored parameter for which a maximum or minimum level is required to be established under § 63.114(e) for continuous process vents, § 63.1324 for batch process vents and aggregate batch vent streams, § 63.143(f) for process wastewater, § 63.1332(m) for emission points in emissions averages, paragraph (e)(8) of this section, or paragraph (f) of this section, the Notification of Compliance Status shall contain the information specified in paragraphs (e)(5)(ii)(A) through (e)(5)(ii)(D) of this section, unless this information has been established and provided in the operating permit application. Further, as described in § 63.1314(a)(9), for those storage vessels for which the monitoring plan required by § 63.1314(a)(9) specifies compliance with the provisions of § 63.1334, the owner or operator shall provide the information specified in paragraphs (e)(5)(ii)(A) through (e)(5)(ii)(D) of this section for each monitored parameter, unless this information has been established and provided in the operating permit application. For those storage vessels for which the monitoring plan required by § 63.1314(a)(9) does not require compliance with the provisions of § 63.1334, the owner or operator shall provide the information specified in § 63.120(d)(3) as part of the Notification of Compliance Status, unless this information has been established and provided in the operating permit application.

* * * * *

(iv) The determination of applicability for flexible operation units as specified in § 63.1310(f).

* * * * *

(vi) The results for each predominant use determination made under § 63.1310(g), for storage vessels assigned to an affected source subject to this subpart.

(vii) The results for each predominant use determination made under § 63.1310(h), for recovery operations equipment assigned to an affected source subject to this subpart.

(viii) For owners or operators of Group 2 batch process vents establishing a batch mass input limitation as specified in § 63.1325(g), the affected source's operating year for purposes of determining compliance with the batch mass input limitation.

(ix) If any emission point is subject to this subpart and to other standards as specified in § 63.1311, and if the provisions of § 63.1311 allow the owner or operator to choose which testing, monitoring, reporting, and recordkeeping provisions will be followed, then the Notification of Compliance Status shall indicate which rule's requirements will be followed for testing, monitoring, reporting, and recordkeeping.

(x) An owner or operator who transfers a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream for treatment pursuant to § 63.132(g) shall include in the Notification of Compliance Status the name and location of the transferee and a description of the Group 1 wastewater stream or residual sent to the treatment facility.

(xi) An owner or operator complying with paragraph (h)(1) of this section shall notify the Administrator of the election to comply with paragraph (h)(1) of this section as part of the Notification of Compliance Status or as part of the appropriate Periodic Report as specified in paragraph (e)(6)(ix) of this section.

(6) *Periodic Reports.* For existing and new affected sources, the owner or operator shall submit Periodic Reports as specified in paragraphs (e)(6)(i) through (e)(6)(xi) of this section. In addition, for equipment leaks subject to § 63.1331, the owner or operator shall submit the information specified in § 63.182(d) under the conditions listed in § 63.182(d), and for heat exchange systems subject to § 63.1328, the owner or operator shall submit the information specified in § 63.104(f)(2) as part of the Periodic Report required by this paragraph (e)(6). Section 63.1334 shall govern the use of monitoring data to determine compliance for Group 1 emissions points and for Group 1 and Group 2 emission points included in emissions averages with the following exception: As discussed in § 63.1314(a)(9), for storage vessels to which the provisions of § 63.1334 do not apply, as specified in the monitoring plan required by § 63.120(d)(2), the owner or operator is required to comply with the requirements set out in the monitoring plan, and monitoring records may be used to determine compliance.

(i) Except as specified in paragraphs (e)(6)(xi) and (e)(6)(xii) of this section, a report containing the information in paragraph (e)(6)(ii) of this section or containing the information in paragraphs (e)(6)(iii) through (e)(6)(x) of this section, as appropriate, shall be submitted semiannually no later than 60 days after the end of each 6-month period. The first report shall be submitted no later than 240 days after the date the Notification of Compliance Status is due and shall cover the 6-month period beginning on the date the Notification of Compliance Status is due.

(ii) If none of the compliance exceptions specified in paragraphs (e)(6)(iii) through (e)(6)(ix) of this section occurred during the 6-month period, the Periodic Report required by

paragraph (e)(6)(i) of this section shall be a statement that there were no compliance exceptions as described in this paragraph for the 6-month period covered by that report and no activities specified in paragraphs (e)(6)(iii) through (e)(6)(ix) of this section occurred during the 6-month period covered by that report.

(iii) * * *

(B) The daily average values or batch cycle daily average values of monitored parameters for both excused excursions, as defined in § 63.1334(g), and unexcused excursions, as defined in § 63.1334(f). For excursions caused by lack of monitoring data, the start-time and duration of periods when monitoring data were not collected shall be specified.

(C) [Reserved.]

(D) The information in paragraphs (e)(6)(iii)(D)(*1*) through (e)(6)(iii)(D)(*4*) of this section, as applicable:

* * * * *

(*2*) Notification if a process change is made such that the group status of any emission point changes from Group 2 to Group 1. The owner or operator is not required to submit a notification of a process change if that process change caused the group status of an emission point to change from Group 1 to Group 2. However, until the owner or operator notifies the Administrator that the group status of an emission point has changed from Group 1 to Group 2, the owner or operator is required to continue to comply with the Group 1 requirements for that emission point. This notification may be submitted at any time.

(*3*) Notification if one or more emission point(s) (other than equipment leaks) or one or more TPPU is added to an affected source. The owner or operator shall submit the information contained in paragraphs (e)(6)(iii)(D)(*3*)(*i*) through (e)(6)(iii)(D)(*3*)(*ii*) of this section:

(*i*) A description of the addition to the affected source; and

(*ii*) Notification of the group status of the additional emission point or all emission points in the TPPU.

(*4*) For process wastewater streams sent for treatment pursuant to § 63.132(g), reports of changes in the identity of the treatment facility or transferee.

* * * * *

(iv) For each batch process vent with a batch mass input limitation, every second Periodic Report shall include the mass of HAP or material input to the batch unit operation during the 12-month period covered by the preceding and current Periodic Reports, and a statement of whether the batch process vent was in or out of compliance with the batch mass input limitation.

(v) * * *

(B) For additional tests performed for the same kind of emission point using the same method, results and any other information, pertaining to the performance test, that is requested on a case-by-case basis by the Administrator shall be submitted, but a complete test report is not required.

(vi) Notification of a change in the primary product of a TPPU, in accordance with the provisions in § 63.1310(f). This includes a change in primary product from one thermoplastic product to either another thermoplastic product or to a non-thermoplastic product.

(vii) The results for each change made to a predominant use determination made under § 63.1310(g) for a storage vessel that is assigned to an affected source subject to this subpart after the change.

(viii) The Periodic Report shall include the results for each change made to a predominant use determination made under § 63.1310(h) for recovery operations equipment assigned to an affected source subject to this subpart after the change.

(ix) An owner or operator complying with paragraph (h)(1) of this section shall notify the Administrator of the election to comply with paragraph (h)(1) of this section as part of the Periodic Report or as part of the Notification of Compliance Status as specified in paragraph (e)(5)(xi) of this section.

(x) An owner or operator electing not to retain daily average or batch cycle daily average values under paragraph (h)(2) of this section shall notify the Administrator as specified in paragraph (h)(2)(i) of this section.

(xi) The owner or operator of an affected source shall submit quarterly reports for all emission points included in an emissions average as specified in paragraphs (e)(6)(xi)(A) through (e)(6)(xi)(C) of this section.

(A) The quarterly reports shall be submitted no later than 60 days after the end of each quarter. The first report shall be submitted with the Notification of Compliance Status no later than 150 days after the compliance date.

(B) The quarterly reports shall include the information specified in paragraphs (e)(6)(xi)(B)(1) through (e)(6)(xi)(B)(*7*) of this section for all emission points included in an emissions average.

(*1*) The credits and debits calculated each month during the quarter;

(*2*) A demonstration that debits calculated for the quarter are not more than 1.30 times the credits calculated for the quarter, as required under § 63.1332(e)(4);

(*3*) The values of any inputs to the debit and credit equations in § 63.1332 (g) and (h) that change from month to month during the quarter or that have changed since the previous quarter;

(*4*) 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 as described in paragraph (e)(6)(v) of this section;

(*5*) Reports of daily average (or batch cycle daily average) values of monitored parameters for excursions as defined in § 63.1334(f);

(*6*) For excursions caused by lack of monitoring data, the duration of periods when monitoring data were not collected shall be specified; and

(*7*) Any other information the affected source is required to report under the operating permit or Emissions Averaging Plan for the affected source.

(C) Every fourth quarterly report shall include the following:

(*1*) A demonstration that annual credits are greater than or equal to annual debits as required by § 63.1332(e)(3); and

(*2*) A certification of compliance with all the emissions averaging provisions in § 63.1332.

(xii) The owner or operator of an affected source shall submit quarterly reports for particular emission points and process sections not included in an emissions average as specified in paragraphs (e)(6)(xii)(A) through (e)(6)(xii)(D) of this section.

(A) The owner or operator of an affected source shall submit quarterly reports for a period of 1 year for an emission point or process section that is not included in an emissions average if:

(*1*) A control or recovery device for a particular emission point or process section has more excursions, as defined in § 63.1334(f), than the number of excused excursions allowed under § 63.1334(g) for a semiannual reporting period; or

(*2*) The Administrator requests that the owner or operator submit quarterly reports for the emission point or process section.

(B) The quarterly reports shall include all information specified in paragraphs (e)(6)(iii) through (e)(6)(ix) of this section applicable to the emission point or process section for which quarterly reporting is required under paragraph (e)(6)(xii)(A) of this section. Information applicable to other emission points within the affected source shall be submitted in the semiannual reports required under paragraph (e)(6)(i) of this section.

(C) Quarterly reports shall be submitted no later than 60 days after the end of each quarter.

(D) After quarterly reports have been submitted for an emission point for 1 year without more excursions occurring (during that year) than the number of excused excursions allowed under § 63.1334(g), the owner or operator may return to semiannual reporting for the emission point or process section.

(7) *Other reports.* Other reports shall be submitted as specified in paragraphs (e)(7)(i) through (e)(7)(iv) of this section.

* * * * *

(ii) For owners or operators of affected sources required to request approval for a nominal control efficiency for use in calculating credits for an emissions average, the information specified in § 63.1332(i) shall be submitted as specified in paragraph (e)(7)(ii) (A) or (B) of this section, as appropriate.

(A) If use of a nominal control efficiency is part of the initial Emissions Averaging Plan described in paragraph (e)(4)(ii) of this section, the information in paragraph (e)(7)(ii) of this section shall be submitted with the Emissions Averaging Plan.

(B) If an owner or operator elects to use a nominal control efficiency after submittal of the initial Emissions Averaging Plan as described in paragraph (e)(4)(ii) of this section, the information in paragraph (e)(7)(ii) of this section shall be submitted at the discretion of the owner or operator.

(iii) When the conditions of § 63.1310(f)(3)(i) or § 63.1310(f)(4)(i) are met, reports of changes to the primary product for a TPPU or process unit as required by § 63.1310(f)(3)(ii) or (f)(4)(ii), respectively, shall be submitted.

(iv) Owners or operators of TPPU or emission points (other than equipment leak components subject to § 63.1331) that are subject to § 63.1310(i)(1) or (i)(2) shall submit a report as specified in paragraphs (e)(7)(iv) (A) and (B) of this section.

(A) Reports shall include:

(*1*) A description of the process change or addition, as appropriate;

(*2*) The planned start-up date and the appropriate compliance date, according to § 63.1310(i) (1) or (2); and

(*3*) Identification of the group status of emission points (except equipment leak components subject to § 63.1331) specified in paragraphs (e)(7)(iv)(A)(*3*)(*i*) through (e)(7)(iv)(A)(*3*)(*iii*) of this section, as applicable.

(*i*) All the emission points in the added TPPU as described in § 63.1310(i)(1).

(*ii*) All the emission points in an affected source designated as a new affected source under § 63.1310(i)(2)(i).

(*iii*) All the added or created emission points as described in § 63.1310(i)(2)(ii).

(*4*) If the owner or operator wishes to request approval to use alternative monitoring parameters, alternative continuous monitoring or recordkeeping, alternative controls, engineering assessment to estimate emissions from a batch emissions episode, or wishes to establish parameter monitoring levels according to the procedures contained in § 63.1334 (c) or (d), a Precompliance Report shall be submitted in accordance with paragraph (e)(7)(iv)(B) of this section.

(B) Reports shall be submitted as specified in paragraphs (e)(7)(iv)(B)(1) through (e)(7)(iv)(B)(3) of this section, as appropriate.

(*1*) Owners or operators of an added TPPU subject to § 63.1310(i)(1) shall submit a report no later than 180 days prior to the compliance date for the TPPU.

(*2*) Owners or operators of an affected source designated as a new affected source under § 63.1310(i)(2)(i) shall submit a report no later than 180 days prior to the compliance date for the affected source.

(*3*) Owners or operators of any emission point (other than equipment leak components subject to § 63.1331) subject to § 63.1310(i)(2)(ii) shall submit a report no later than 180 days prior to the compliance date for those emission points.

(8) *Operating permit application.* An owner or operator who submits an operating permit application instead of an Emissions Averaging Plan or a Precompliance Report shall include the following information with the operating permit application:

(i) The information specified in paragraph (e)(4) of this section for points included in an emissions average; and

(ii) The information specified in paragraph (e)(3) of this section, Precompliance Report, as applicable.

(f) *Alternative monitoring parameters.* The owner or operator who has been directed by any section of this subpart or any section of another subpart referenced by this subpart, that expressly referenced this paragraph (f) to set unique monitoring parameters, or who requests approval to monitor a different parameter than those specified in § 63.1314 for storage vessels, § 63.1315 or § 63.1317, as appropriate, for continuous process vents, § 63.1321 for batch process vents and aggregate batch vent streams, or § 63.1330 for process wastewater shall submit the information specified in paragraphs (f)(1) through (f)(3) of this section in the Precompliance Report, as required by paragraph (e)(3) of this section. The owner or operator shall retain for a period of 5 years each record required by paragraphs (f)(1) through (f)(3) of this section.

* * * * *

(3) The required information shall include a description of the proposed monitoring, recordkeeping, and reporting system, to include the frequency and content of monitoring, recordkeeping, and reporting. Further, the rationale for the proposed monitoring, recordkeeping, and reporting system shall be included if either condition in paragraph (f)(3)(i) or (f)(3)(ii) of this section is met:

* * * * *

(g) *Alternative continuous monitoring and recordkeeping.* An owner or operator choosing not to implement the provisions listed in § 63.1315 or § 63.1317, as appropriate, for continuous process vents, § 63.1321 for batch process vents and aggregate batch vent streams, or § 63.1330 for process wastewater, may instead request approval to use alternative continuous monitoring and recordkeeping provisions according to the procedures specified in paragraphs (g)(1) through (g)(4) of this section. Requests shall be submitted in the Precompliance Report as specified in paragraph (e)(3)(iv) of this section, if not already included in the operating permit application, and shall contain the information specified in paragraphs (g)(2)(ii) and (g)(3)(ii) of this section, as applicable.

* * * * *

(3) An owner or operator may request approval to use an automated data compression recording system that does not record monitored operating parameter values at a set frequency, but records all values that meet set criteria for variation from previously recorded values, in accordance with paragraphs (g)(3)(i) and (g)(3)(ii) of this section.

(i) * * *

(A) Measure the operating parameter value at least once during every 15 minute period;

* * * * *

(4) An owner or operator may request approval to use other alternative monitoring systems according to the procedures specified in § 63.8(f)(4).

(h) *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 (h)(1) or (h)(2) of this section as alternatives to the continuous

operating parameter monitoring and recordkeeping provisions that would otherwise apply under this subpart. The owner or operator shall retain for a period of 5 years each record required by paragraph (h)(1) or (h)(2) of this section, except as otherwise provided in paragraph (h)(1)(vi)(D) of this section.

(1) The owner or operator may retain only the daily average (or batch cycle daily average) value, and is not required to retain more frequent monitored operating parameter values, for a monitored parameter with respect to an item of equipment, if the requirements of paragraphs (h)(1)(i) through (h)(1)(vi) of this section are met. An owner or operator electing to comply with the requirements of paragraph (h)(1) of this section shall notify the Administrator in the Notification of Compliance Status as specified in paragraph (e)(5)(xi) of this section or, if the Notification of Compliance Status has already been submitted, in the Periodic Report immediately preceding implementation of the requirements of paragraph (h)(1) of this section as specified in paragraph (e)(6)(ix) of this section.

* * * * *

(ii) * * *

(B) The running average is based on at least six 1-hour average values; and

* * * * *

(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 (h)(1)(ii) of this section reaches a set point that is appropriately related to the established limit for the parameter that is being monitored.

* * * * *

(vi) The owner or operator shall retain the records identified in paragraphs (h)(1)(vi)(A) through (h)(1)(vi)(D) of this section.

* * * * *

(B) A description of the applicable monitoring system(s), and of how compliance will be achieved with each requirement of paragraphs (h)(1)(i) through (h)(1)(v) of this section. The description shall identify the location and format (e.g., on-line storage, log entries) for each required record. If the description changes, the owner or operator shall retain both the current and the most recent superseded description, as provided in paragraph (a) of this section, except as provided in paragraph (h)(1)(vi)(D) of this section.

(C) A description, and the date, of any change to the monitoring system that would reasonably be expected to impair its ability to comply with the requirements of paragraph (h)(1) of this section.

(D) Owners and operators subject to paragraph (h)(1)(vi)(B) of this section shall retain the current description of the monitoring system as long as the description is current. 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) * * *

(i) If the owner or operator elects not to retain the daily average (or batch cycle daily average) values, the owner or operator shall notify the Administrator in the next Periodic Report as specified in paragraph (e)(6)(x) of this section. The notification shall identify the parameter and unit of equipment.

* * * * *

(iii) The owner or operator shall retain the records specified in paragraphs (h)(1)(i) through (h)(1)(iii) of this section, for the duration specified in paragraph (h) of this section. For any calendar week, if compliance with paragraphs (h)(1)(i) through (h)(1)(iv) of this section does not result in retention of a record of at least one occurrence or measured parameter value, the owner or operator shall record and retain at least one parameter value during a period of operation other than a start-up, shutdown, or malfunction.

* * * * *

54. Revising Tables 1, 2, 6, 7, and 8, and adding Table 9 to Subpart JJJ of Part 63, to read as follows:

TABLE 1 TO SUBPART JJJ OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART JJJ AFFECTED SOURCES

Reference	Applies to subpart JJJ	Comment
63.1(a)(1)	Yes	§ 63.1312 specifies definitions in addition to or that supersede definitions in § 63.2.
63.1(a)(2)	Yes.	
63.1(a)(3)	Yes	§ 63.1311(g) through (l) and § 63.160(b) identify those standards which may apply in addition to the requirements of subparts JJJ and H of this part, and specify how compliance shall be achieved.
63.1(a)(4)	Yes	Subpart JJJ (this table) specifies the applicability of each paragraph in subpart A to subpart JJJ.
63.1(a)(5)	No	[Reserved.]
63.1(a)(6)–63.1(a)(8)	Yes.	
63.1(a)(9)	No	[Reserved.]
63.1(a)(10)	Yes.	
63.1(a)(11)	Yes.	
63.1(a)(12)–63.1(a)(14)	Yes.	
63.1(b)(1)	No	§ 63.1310(a) contains specific applicability criteria.
63.1(b)(2)	Yes.	
63.1(b)(3)	No	§ 63.1310(b) provides documentation requirements for TPPUs not considered affected sources.
63.1(c)(1)	Yes	Subpart JJJ (this table) specifies the applicability of each paragraph in subpart A to subpart JJJ.
63.1(c)(2)	No	Area sources are not subject to subpart JJJ.
63.1(c)(3)	No	[Reserved.]
63.1(c)(4)	Yes.	
63.1(c)(5)	Yes	Except that affected sources are not required to submit notifications that are not required by subpart U.
63.1(d)	No	[Reserved.]

TABLE 1 TO SUBPART JJJ OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART JJJ AFFECTED SOURCES—Continued

Reference	Applies to subpart JJJ	Comment
63.1(e)	Yes.	
63.2	Yes	§ 63.1312 specifies those subpart A definitions that apply to subpart JJJ.
63.3	Yes.	
63.4(a)(1)–63.4(a)(3)	Yes.	
63.4(a)(4)	No	[Reserved.]
63.4(a)(5)	Yes.	
63.4(b)	Yes.	
63.4(c)	Yes.	
63.5(a)(1)	Yes	Except the terms ''source'' and ''stationary source'' should be interpreted as having the same meaning as ''affected source.''
63.5(a)(2)	Yes.	
63.5(b)(1)	Yes	Except § 63.1310(i) defines when construction or reconstruction is subject to new source standards.
63.5(b)(2)	No	[Reserved.]
63.5(b)(3)	Yes.	
63.5(b)(4)	Yes	Except that the Initial Notification and § 63.9(b) requirements do not apply.
63.5(b)(5)	Yes.	
63.5(b)(6)	Yes	Except that § 63.1310(i) defines when construction or reconstruction is subject to new source standards.
63.5(c)	No	[Reserved.]
63.5(d)(1)(i)	Yes	Except that the references to the Initial Notification and § 63.9(b)(5) do not apply.
63.5(d)(1)(ii)	Yes	Except that § 63.5(d)(1)(ii)(H) does not apply.
63.5(d)(1)(iii)	No	§§ 63.1335(e)(5) and 63.1331(a)(4) specify Notification of Compliance Status requirements.
63.5(d)(2)	No.	
63.5(d)(3)	Yes	Except § 63.5(d)(3)(ii) does not apply, and equipment leaks subject to § 63.1331 are exempt.
63.5(d)(4)	Yes.	
63.5(e)	Yes.	
63.5(f)(1)	Yes.	
63.5(f)(2)	Yes	Except that where § 63.9(b)(2) is referred to, the owner or operator need not comply.
63.6(a)	Yes.	
63.6(b)(1)	Yes.	
63.6(b)(2)	Yes.	
63.6(b)(3)	Yes.	
63.6(b)(4)	Yes.	
63.6(b)(5)	Yes.	
63.6(b)(6)	No	[Reserved.]
63.6(b)(7)	No.	
63.6(c)(1)	Yes	Except that § 63.1311 specifies the compliance date.
63.6(c)(2)	No.	
63.6(c)(3)	No	[Reserved.]
63.6(c)(4)	No	[Reserved.]
63.6(c)(5)	Yes.	
63.6(d)	No	[Reserved.]
63.6(e)	Yes	Except as otherwise specified for individual paragraphs, and § 63.6(e) does not apply to Group 2 emission points, unless they are included in an emissions average.[a]
63.6(e)(1)(i)	No	This is addressed by § 63.1310(j)(4).
63.6(e)(1)(ii)	Yes.	
63.6(e)(1)(iii)	Yes.	
63.6(e)(2)	Yes.	
63.6(e)(3)(i)	Yes	For equipment leaks (subject to § 63.1331), the start-up, shutdown, and malfunction plan requirement of § 63.6(e)(3)(i) is limited to control devices and is optional for other equipment. The start-up, shutdown, malfunction plan may include written procedures that identify conditions that justify a delay of repair.
63.6(e)(3)(i)(A)	No	This is addressed by § 63.1310(j)(4).
63.6(e)(3)(i)(B)	Yes.	
63.6(e)(3)(i)(C)	Yes.	
63.6(e)(3)(ii)	Yes.	
63.6(e)(3)(iii)	No	Recordkeeping and reporting are specified in § 63.1335(b)(1).
63.6(e)(3)(iv)	No	Recordkeeping and reporting are specified in § 63.1335(b)(1).
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 § 63.1310(j)(4).
63.6(e)(3)(vii)(C)	Yes.	
63.6(e)(3)(viii)	Yes.	

TABLE 1 TO SUBPART JJJ OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART JJJ AFFECTED SOURCES—Continued

Reference	Applies to subpart JJJ	Comment
63.6(f)(1)	Yes.	
63.6(f)(2)	Yes	Except § 63.7(c), as referred to in § 63.6(f)(2)(iii)(D), does not apply, and except that § 63.6(f)(2)(ii) does not apply to equipment leaks subject to § 63.1331.
63.6(f)(3)	Yes.	
63.6(g)	Yes.	
63.6(h)	No	Subpart JJJ does not require opacity and visible emission standards.
63.6(i)(1)	Yes.	
63.6(i)(2)	Yes.	
63.6(i)(3)	Yes.	
63.6(i)(4)(i)(A)	Yes.	
63.6(i)(4)(i)(B)	No	Dates are specified in § 63.1311(e) and § 63.1335(e)(3)(i).
63.6(i)(4)(ii)	No.	
63.6(i)(5)–(14)	Yes.	
63.6(i)(15)	No	[Reserved.]
63.6(i)(16)	Yes.	
63.6(j)	Yes.	
63.7(a)(1)	Yes.	
63.7(a)(2)	No	§ 63.1335(e)(5) specifies the submittal dates of performance test results for all emission points except equipment leaks; for equipment leaks, compliance demonstration results are reported in the Periodic Reports.
63.7(a)(3)	Yes.	
63.7(b)	No	§ 63.1333(a)(4) specifies notification requirements.
63.7(c)	No.	
63.7(d)	Yes.	
63.7(e)(1)	Yes	Except that all performance tests shall be conducted at maximum representative operating conditions achievable at the time without disruption of operations or damage to equipment.
63.7(e)(2)	Yes.	
63.7(e)(3)	No	Subpart JJJ specifies requirements.
63.7(e)(4)	Yes.	
63.7(f)	Yes	Except that § 63.144(b)(5)(iii)(A) and (B) shall apply for process wastewater. Also, because a site specific test plan is not required, the notification deadline in § 63.7(f)(2)(i) shall be 60 days prior to the performance test, and in § 63.7(f)(3), approval or disapproval of the alternative test method shall not be tied to the site specific test plan.
63.7(g)	Yes	Except that the requirements in § 63.1335(e)(5) apply instead of references to the Notification of Compliance Status report in § 63.9(h). In addition, equipment leaks subject to § 63.1331 are not required to conduct performance tests.
63.7(h)	Yes	Except § 63.7(h)(4)(ii) is not applicable, because the site-specific test plans in § 63.7(c)(2) are not required.
63.8(a)(1)	Yes.	
63.8(a)(2)	No.	
63.8(a)(3)	No	[Reserved.]
63.8(a)(4)	Yes.	
63.8(b)(1)	Yes.	
63.8(b)(2)	No	Subpart JJJ specifies locations to conduct monitoring.
63.8(b)(3)	Yes.	
63.8(c)(1)	Yes.	
63.8(c)(1)(i)	Yes.	
63.8(c)(1)(ii)	No	For all emission points except equipment leaks, comply with § 63.1335(b)(1)(i)(B); for equipment leaks, comply with § 63.181(g)(2)(iii).
63.8(c)(1)(iii)	Yes.	
63.8(c)(2)	Yes.	
63.8(c)(3)	Yes.	
63.8(c)(4)	No	§ 63.1334 specifies monitoring frequency; not applicable to equipment leaks because § 63.1331 does not require continuous monitoring systems.
63.8(c)(5)–63.8(c)(8)	No.	
63.8(d)	No.	
63.8(e)	No.	
63.8(f)(1)–63.8(f)(3)	Yes.	
63.8(f)(4)(i)	No	Timeframe for submitting request is specified in § 63.1335(f) or (g); not applicable to equipment leaks because § 63.1331 (through reference to subpart H) specifies acceptable alternative methods.
63.8(f)(4)(ii)	No	Contents of request are specified in § 63.1335(f) or (g).
63.8(f)(4)(iii)	No.	
63.8(f)(5)(i)	Yes.	
63.8(f)(5)(ii)	No.	
63.8(f)(5)(iii)	Yes.	
63.8(f)(6)	No	Subpart JJJ does not require continuous emission monitors.

TABLE 1 TO SUBPART JJJ OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART JJJ AFFECTED SOURCES—Continued

Reference	Applies to subpart JJJ	Comment
63.8(g)	No	Data reduction procedures specified in § 63.1335 (d) and (h); not applicable to equipment leaks.
63.9(a)	Yes.	
63.9(b)	No	Subpart JJJ does not require an initial notification.
63.9(c)	Yes.	
63.9(d)	Yes.	
63.9(e)	No	§ 63.1333(a)(4) specifies notification deadline.
63.9(f)	No	Subpart JJJ does not require opacity and visible emission standards.
63.9(g)	No.	
63.9(h)	No	§ 63.1335(e)(5) specifies Notification of Compliance Status requirements.
63.9(i)	Yes.	
63.9(j)	No.	
63.10(a)	Yes.	
63.10(b)(1)	No	§ 63.1335(a) specifies record retention requirements.
63.10(b)(2)	No	Subpart JJJ specifies recordkeeping requirements.
63.10(b)(3)	No	§ 63.1310(b) requires documentation of sources that are not affected sources.
63.10(c)	No	§ 63.1335 specifies recordkeeping requirements.
63.10(d)(1)	Yes.	
63.10(d)(2)	No	§ 63.1335(e) specifies performance test reporting requirements; not applicable to equipment leaks.
63.10(d)(3)	No	Subpart JJJ does not require opacity and visible emission standards.
63.10(d)(4)	Yes.	
63.10(d)(5)	Yes	Except that reports required by § 63.10(d)(5)(i) and/or § 63.10(d)(5)(ii) may be submitted at the same time as Periodic Reports specified in § 63.1335(e)(6). The start-up, shutdown, and malfunction plan, and any records or reports of start-up, shutdown, and malfunction do not apply to Group 2 emission points unless they are included in an emissions average.
63.10(e)	No	§ 63.1335 specifies reporting requirements.
63.10(f)	Yes.	
63.11	Yes	Except that instead of § 63.11(b), § 63.1333(e) shall apply.
63.12	Yes	Except that the authority of § 63.1332(i) and the authority of § 63.177 (for equipment leaks) shall not be delegated to States.
63.13—63.15	Yes.	

[a] The plan, and any records or reports of start-up, shutdown, and malfunction do not apply to Group 2 emission points unless they are included in an emissions average.

TABLE 2 TO SUBPART JJJ OF PART 63.—GROUP 1 STORAGE VESSELS AT EXISTING AFFECTED SOURCES

Vessel capacity (cubic meters)	Vapor pressure [a] (kilopascals)
75 ≤ capacity < 151	≥ 13.1
151 ≤ capacity	≥ 5.2

[a] Maximum true vapor pressure of total organic HAP at storage temperature.

* * * * *

TABLE 6 TO SUBPART JJJ OF PART 63.—KNOWN ORGANIC HAP EMITTED FROM THE PRODUCTION OF THERMOPLASTIC PRODUCTS

Thermoplastic product/subcategory	Organic HAP/chemical name (CAS No.)						
	Acetaldehyde (75–07–0)	Acrylonitrile (107–13–1)	1,3 Butadiene (106–99–0)	1,4-Dioxane (123–91–1)	Ethylene Glycol (107–21–1)	Methanol (67–56–1)	Styrene (100–42–5)
ABS latex		√	√				√
ABS using a batch emulsion process		√	√				√
ABS using a batch suspension process		√	√				√
ABS using a continuous emulsion process		√	√				√
ABS using a continuous mass process		√	√				√
ASA/AMSAN		√	√				√
EPS							

TABLE 6 TO SUBPART JJJ OF PART 63.—KNOWN ORGANIC HAP EMITTED FROM THE PRODUCTION OF THERMOPLASTIC PRODUCTS—Continued

Thermoplastic product/subcategory	Organic HAP/chemical name (CAS No.)						
	Acetaldehyde (75–07–0)	Acrylonitrile (107–13–1)	1,3 Butadiene (106–99–0)	1,4-Dioxane (123–91–1)	Ethylene Glycol (107–21–1)	Methanol (67–56–1)	Styrene (100–42–5)
MABS		√	√				√
MBS			√				√
Nitrile resin		√					
PET using a batch dimethyl terephthalate process	√			√	√	√	
PET using a batch terephthalic acid process	√			√	√		
PET using a continuous dimethyl terephthalate process	√			√	√	√	
PET using a continuous terephthalic acid process	√			√	√		
PET using a continuous terephthalic acid high viscosity multiple end finisher process	√			√	√		
Polystyrene resin using a batch process							√
Polystyrene resin using a continuous process							√
SAN using a batch process		√					√
SAN using a continuous process		√					√

CAS No. = Chemical Abstract Service Number
ABS = Acrylonitrile butadiene styrene resin
ASA/AMSAN = Acrylonitrile styrene resin/alpha methyl styrene acrylonitrile resin
EPS = expandable polystyrene resin
MABS = methyl methacrylate acrylonitrile butadiene styrene resin
PET = poly(ethylene terephthalate) resin
SAN = styrene acrylonitrile resin
MBS = methyl methacrylate butadiene styrene resin

TABLE 7 OF SUBPART JJJ OF PART 63.—GROUP 1 BATCH PROCESS VENTS AND AGGREGATE BATCH VENT STREAMS—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS

Control device	Parameters to be monitored	Recordkeeping and reporting requirements for monitored parameters
Thermal Incinerator	Firebox temperature [a]	1. Continuous records as specified in § 63.1326(e)(1).[b] 2. Record and report the average firebox temperature measured during the performance test—NCS.[c] 3. Record the batch cycle daily average firebox temperature as specified in § 63.1326(e)(2). 4. Report all batch cycle daily average temperatures that are below the minimum operating value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]
Catalytic Incinerator	Temperature upstream and downstream of the catalyst bed.	1. Continuous records as specified in § 63.1326(e)(1).[b] 2. Record and report the average upstream and downstream temperatures and the average temperature difference across the catalyst bed measured during the performance test—NCS.[c] 3. Record the batch cycle daily average upstream temperature and temperature difference across catalyst bed as specified in § 63.1326(e)(2). 4. Report all batch cycle daily average upstream temperatures that are below the minimum upstream value established in the NCS or operating permit—PR.[d e] 5. Report all batch cycle daily average temperature differences across the catalyst bed that are below the minimum difference.
Boiler or Process Heater with a design heat input capacity less than 44 megawatts and where the batch process vents or aggregate batch vent streams are not introduced with or used as the primary fuel.	Firebox temperature [a]	1. Continuous records as specified in § 63.1326(e)(1).[b] 2. Record and report the average firebox temperature measured during the performance test—NCS.[c] 3. Record the batch cycle daily average firebox temperature as specified in § 63.1326(e)(2).[d] 4. Report all batch cycle daily average temperatures that are below the minimum operating value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]

TABLE 7 OF SUBPART JJJ OF PART 63.—GROUP 1 BATCH PROCESS VENTS AND AGGREGATE BATCH VENT STREAMS—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS—Continued

Control device	Parameters to be monitored	Recordkeeping and reporting requirements for monitored parameters
Flare	Presence of a flame at the pilot light.	1. Hourly records of whether the monitor was continuously operating during batch emission episodes, or portions thereof, selected for control and whether a flame was continuously present at the pilot light during said periods. 2. Record and report the presence of a flame at the pilot light over the full period of the compliance determination—NCS. [c] 3. Record the times and durations of all periods during batch emission episodes, or portions thereof, selected for control when all flames at the pilot light of a flare are absent or the monitor is not operating. 4. Report the times and durations of all periods during batch emission episodes, or portions thereof, selected for control when all flames at the pilot light of a flare are absent—PR.[d]
Scrubber for halogenated batch process vents or aggregate batch vent streams (Note: Controlled by a combustion device other than a flare).	pH of scrubber effluent, and	1. Continuous records as specified in § 63.1326(e)(1). [b] 2. Record and report the average pH of the scrubber effluent measured during the performance test—NCS. [c] 3. Record the batch cycle daily average pH of the scrubber effluent as specified in § 63.1326(e)(2). 4. Report all batch cycle daily average pH values of the scrubber effluent that are below the minimum operating value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]
	Scrubber liquid and gas flow rates [§ 63.1324(b)(4)(ii)].	1. Records as specified in § 63.1326(e)(1). [b] 2. Record and report the scrubber liquid/gas ratio averaged over the full period of the performance test—NCS. [c] 3. Record the batch cycle daily average scrubber liquid/gas ratio as specified in § 63.1326(e)(2). 4. Report all batch cycle daily average scrubber liquid/gas ratios that are below the minimum value established in the NCS or operating permit and all instances when monitoring data are not collected—PR. [d e]
Absorber [f]	Exit temperature of the absorbing liquid, and.	1. Continuous records as specified in § 63.1326(e)(1). [b] 2. Record and report the average exit temperature of the absorbing liquid measured during the performance test—NCS. [c] 3. Record the batch cycle daily average exit temperature of the absorbing liquid as specified in § 63.1326(e)(2) for each batch cycle. 4. Report all the batch cycle daily average exit temperatures of the absorbing liquid that are below the minimum operating value established in the NCS or operating permit and all instances when monitoring data are not collected—PR. [d e]
	Exit specific gravity for the absorbing liquid.	1. Continuous records as specified in § 63.1326(e)(1). [b] 2. Record and report the average exit specific gravity measured during the performance test—NCS. [c] 3. Record the batch cycle daily average exit specific gravity as specified in § 63.1326(e)(2). 4. Report all batch cycle daily average exit specific gravity values that are below the minimum operating value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]
Condenser [f]	Exit (product side) temperature	1. Continuous records as specified in § 63.1326(e)(1).[b] 2. Record and report the average exit temperature measured during the performance test—NCS.[c] 3. Record the batch cycle daily average exit temperature as specified in § 63.1326(e)(2). 4. Report all batch cycle daily average exit temperatures that are above the maximum operating value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]
Carbon Adsorber [f]	Total regeneration steam flow or nitrogen flow, or pressure (gauge or absolute) during carbon bed regeneration cycle(s), and.	1. Record the total regeneration steam flow or nitrogen flow, or pressure for each carbon bed regeneration cycle. 2. Record and report the total regeneration steam flow or nitrogen flow, or pressure during each carbon bed regeneration cycle measured during the performance test—NCS.[c] 3. Report all carbon bed regeneration cycles when the total regeneration steam flow or nitrogen flow, or pressure is above the maximum value established in the NCS or operating permit—PR.[d e]

TABLE 7 OF SUBPART JJJ OF PART 63.—GROUP 1 BATCH PROCESS VENTS AND AGGREGATE BATCH VENT STREAMS—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS—Continued

Control device	Parameters to be monitored	Recordkeeping and reporting requirements for monitored parameters
	Temperature of the carbon bed after regeneration and within 15 minutes of completing any cooling cycle(s).	1. Record the temperature of the carbon bed after each regeneration and within 15 minutes of completing any cooling cycle(s). 2. Record and report the temperature of the carbon bed after each regeneration and within 15 minutes of completing any cooling cycles(s) measured during the performance test—NCS.[c] 3. Report all carbon bed regeneration cycles when the temperature of the carbon bed after regeneration, or within 15 minutes of completing any cooling cycle(s), is above the maximum value established in the NCS or operating permit—PR.[d e]
All Control Devices	Diversion to the atmosphere from the control device or.	1. Hourly records of whether the flow indicator was operating during batch emission episodes, or portions thereof, selected for control and whether a diversion was detected at any time during said periods as specified in § 63.1326(e)(3). 2. Record and report the times of all periods during batch emission episodes, or portions thereof, selected for control when emissions are diverted through a bypass line or the flow indicator is not operating—PR.[d]
	Monthly inspections of sealed valves.	1. Records that monthly inspections were performed as specified in § 63.1326(e)(4)(i). 2. Record and report all monthly inspections that show the valves are in the diverting position or that a seal has been broken—PR.[d]
Absorber, Condenser, and Carbon Adsorber (as an alternative to the requirements previously presented in this table).	Concentration level or reading indicated by an organic monitoring device at the outlet of the control device.	1. Continuous records as specified in § 63.1326(e)(1).[b] 2. Record and report the average batch vent concentration level or reading measured during the performance test—NCS.[c] 3. Record the batch cycle daily average concentration level or reading as specified in § 63.1326(e)(2). 4. Report all batch cycle daily average concentration levels or readings that are above the maximum value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]

[a] Monitor may be installed in the firebox or in the ductwork immediately downstream of the firebox before any substantial heat exchange is encountered.
[b] "Continuous records" is defined in § 63.111.
[c] NCS = Notification of Compliance Status described in § 63.1335(e)(5).
[d] PR = Periodic Reports described in § 63.1335(e)(6).
[e] The periodic reports shall include the duration of periods when monitoring data are not collected as specified in § 63.1335(e)(6)(iii)(C).
[f] Alternatively, these devices may comply with the organic monitoring device provisions listed at the end of this table.

TABLE 8 TO SUBPART JJJ OF PART 63.—OPERATING PARAMETERS FOR WHICH LEVELS ARE REQUIRED TO BE ESTABLISHED FOR CONTINUOUS AND BATCH PROCESS VENTS AND AGGREGATE BATCH VENT STREAMS

Device	Parameters to be monitored	Established operating parameter(s)
Thermal incinerator	Firebox temperature	Minimum temperature.
Catalytic incinerator	Temperature upstream and downstream of the catalyst bed	Minimum upstream temperature; and minimum temperature difference across the catalyst bed.
Boiler or process heater	Firebox temperature	Minimum temperature.
Scrubber for halogenated vents	pH of scrubber effluent; and scrubber liquid and gas flow rates [§ 63.1324(b)(4)(ii)].	Minimum pH; and minimum liquid/gas ratio.
Absorber	Exit temperature of the absorbing liquid; and exit specific gravity of the absorbing liquid.	Maximum temperature; and maximum specific gravity.
Condenser	Exit temperature	Maximum temperature.
Carbon adsorber	Total regeneration steam flow or nitrogen flow, or pressure (gauge or absolute)[a] during carbon bed regeneration cycle; and temperature of the carbon bed after regeneration (and within 15 minutes of completing any cooling cycle(s)).	Maximum flow or pressure; and maximum temperature.
Other devices (or as an alternate to the requirements previously presented in this table)[b].	HAP concentration level or reading at outlet of device	Maximum HAP concentration or reading.

[a] 25 to 50 mm (absolute) is a common pressure level obtained by pressure swing absorbers.
[b] Concentration is measured instead of an operating parameter.

TABLE 9 OF SUBPART JJJ OF PART 63.—ROUTINE REPORTS REQUIRED BY THIS SUBPART

Reference	Description of report	Due date
§ 63.1335(b) and Subpart A	Refer to Table 1 and Subpart A	Refer to Subpart A.
63.1335(e)(3)	Precompliance Report [a]	Existing affected sources—12 months prior to the compliance date. New affected sources—with application for approval of construction or reconstruction.
63.1335(e)(4)	Emissions Averaging Plan	18 months prior to the compliance date.
63.1335(e)(4)(iv)	Updates to Emissions Averaging Plan	120 days prior to making the change necessitating the update.
63.1335(e)(5)	Notification of Compliance Status [b]	Within 150 days after the compliance date.
63.1335(e)(6)	Periodic Reports	Semiannually, no later than 60 days after the end of each 6-month period. See § 63.1335(e)(6)(i) for the due date for the first report.
63.1335(e)(6)(xi)	Quarterly reports for Emissions Averaging	No later than 60 days after the end of each quarter. First report is due with the Notification of Compliance Status.
63.1335(e)(6)(xii)	Quarterly reports upon request of the Administrator.	No later than 60 days after the end of each quarter.
63.1335(e)(7)(i)	Storage Vessels Notification of Inspection.	At least 30 days prior to the refilling of each storage vessel or the inspection of each storage vessel.
63.1335(e)(7)(ii)	Requests for Approval of a Nominal Control Efficiency for Use in Emissions Averaging.	Initial submittal is due with the Emissions Averaging Plan specified in § 63.1335(e)(4)(ii); later submittals are made at the discretion of the owner or operator as specified in § 63.1335(e)(7)(ii)(B).
63.1335(e)(7)(iii)	Notification of Change in the Primary Product	For Notification under § 63.1310(f)(3)(ii)—notification submittal date at the discretion of the owner or operator.[c] For Notification under § 63.1310(f)(4)(ii)—within 6 months of making the determination.

[a] There may be two versions of this report due at different times; one for equipment subject to § 63.1331 and one for other emission points subject to this subpart.

[b] There will be two versions of this report due at different times; one for equipment subject to § 63.1331 and one for other emission points subject to this subpart.

[c] Note that the TPPU remains subject to this subpart until the notification under § 63.1310(f)(3)(i) is made.

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Part IV

Department of Defense

Department of the Army, Corps of Engineers

33 CFR Parts 320, 326, and 331

Administrative Appeal Process Establishment for the Regulatory Program of the Corps of Engineers; Final Rule

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Parts 320, 326, and 331

Final Rule Establishing an Administrative Appeal Process for the Regulatory Program of the Corps of Engineers

AGENCY: Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: On July 19, 1995, the Corps of Engineers published notice in the **Federal Register** of a proposal to establish an administrative appeal process for the regulatory program of the Corps of Engineers, (33 CFR Parts 320–331). The notice period expired on September 5, 1995. The Corps has evaluated and addressed the issues raised in comments submitted in response to the proposed rule. Appropriate changes have been made to clarify and enhance the administrative appeal process for permit denials and declined permits published herein as a Final Rule.

EFFECTIVE DATE: This rule becomes effective on August 6, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Collinson, Corps of Engineers Regulatory Branch, (202) 761–0199.

SUPPLEMENTARY INFORMATION:

I. Background

Shortly after coming into office in 1993, the Clinton Administration convened an interagency working group to address concerns with Federal wetlands policy. After hearing from States, tribes, developers, farmers, environmental interests, members of Congress, and scientists, the working group developed a comprehensive, 40-point plan (the Plan) to enhance wetlands protection, while making wetlands regulations more fair, flexible, and effective for everyone, including America's small landowners. The Plan was issued on August 24, 1993. It emphasizes improving Federal wetlands policy through various means, including streamlining wetlands permitting programs. One of several approaches identified in the Plan for achieving such streamlining was through the development by the Corps of an administrative appeal process, to be implemented after public rulemaking. The Plan provides that the process will be designed to allow for administrative appeal of Section 404 geographic jurisdictional determinations and permit denials.

On July 19, 1995, the Corps of Engineers published notice in the **Federal Register** of a proposal to establish an administrative appeal process for the regulatory program of the Corps of Engineers. The notice period expired on September 5, 1995. The Corps has evaluated and addressed the issues raised in comments submitted in response to the proposed rule. Appropriate changes have been made to clarify and enhance the administrative appeal process for permit denials and declined permits published herein as a Final Rule. In Fiscal Years 1995 to 1999 the President's budgets have included money to implement an administrative appeal process for permit denials and jurisdiction determinations. From FY 95 through FY 97 the Congressional appropriation for the Corps regulatory program was held level at $101 million. In FY 98 Congress appropriated $106 million. This funding in FY 98 allowed the Corps to move toward finalizing regulations for administrative appeals of permit denials and declined permits. Congress held the Corps regulatory program budget level again in FY 99 at $106 million. The President's Budget request for FY 00 of $117 million includes funds necessary to implement the appeals process for jurisdictional determinations as well as the appeals process for permit denials that we are finalizing with this rule. Should Congress provide the full request of $117 million in FY 00, we will proceed to implement the appeals process for jurisdictional determinations.

The rule adopted herein provides for the administrative appeal within the Corps of a denial with prejudice by the district engineer of a Department of the Army permit application, as well as the appeal of a declined proffered individual permit. Consistent with the Plan and as explained below, third parties may participate in the appeal process.

This rule does not establish, at this time, an appeal process for jurisdictional determinations or wetland delineations. We have carefully considered the issue, and have determined that given the resources available to the Corps at this time, we would be unable to administer an appeal process for jurisdictional determinations and wetland delineations in a timely manner without adversely affecting the overall performance of the Corps regulatory program. The employees dedicated to these new tasks would have to be taken from the existing district staffs, with the result that each district would have fewer project managers to evaluate permit applications and administer the rest of the program. Given this situation, we believe that our efforts should be concentrated to the extent possible on maintaining and improving the overall performance of the Corps regulatory program. Should additional resources become available at a later date, we will consider expanding the appeal process to include jurisdictional determinations and wetland delineations.

II. Comments on the Proposed Rule

A. General

Comments received on the proposed rule can be summarized under several broad headings. They are: (1) The type of actions reviewed and the extent of the review; (2) The identity and authority of the review officer (RO); (3) The identity and rights of appellants; (4) Enforcement-related issues; (5) Suggested procedural changes and clarifications; and (6) General expressions of both opposition and support of an administrative appeal process. The comments concerning each of these topics, including those that pertain to the appeal of permit denials and the terms and conditions of proffered individual permits, were carefully considered, and are addressed herein. Comments that pertain solely to the appeal of jurisdictional determinations are not addressed in this document. Consideration of those comments will be addressed at such time as the Corps may adopt an appeal process for jurisdictional determinations.

B. Discussion of Specific Comments

(1) Type of Actions Reviewed and Extent of Review

A number of comments were received requesting that the appeal process be expanded to include the assertion of discretionary authority, issuance of cease and desist orders, special conditions, denial without prejudice of a permit application, and delays in the evaluation of a permit application.

While we recognize the desire of various individuals and interest groups to expand the scope of the administrative appeal process to cover all regulatory decisions that may impact their respective interests, we have determined that there are several reasons why it would not currently be prudent to do so. First, some of the decisions that were suggested should be appealable are preliminary in nature. As a result, there often is not an adequate administrative record upon which to base a meaningful review. For example, the assertion of discretionary authority to require an individual permit for an activity is often based upon preliminary

indications that the potential adverse effects of a particular project on the environment, or other aspects of the public interest, may be more than minimal. In such cases, the individual permit process is needed to investigate the probable effect of the project on the public interest before making a final permit decision. In addition, the assertion of discretionary authority only addresses the form of authorization that is being considered, and not whether the proposed activity will be authorized. Second, we have limited resources to implement an administrative appeal process, and we could easily find ourselves to be overwhelmed by the demand for administrative review of a broad range of regulatory decisions. Given our FY 1998 appropriation from Congress, sufficient funds are available to implement properly an administrative appeal process for denied permits, and declined individual permits only. Third, we do not wish to encourage permit applicants to enter into a formal administrative appeal process without first utilizing the informal review process already available in Corps district offices. The informal district review process, generally based on additional information or a new interpretation of existing information, is the most timely and efficient means to resolve many issues, such as jurisdictional questions. Accordingly, at this time, we are limiting the administrative appeal process to denied permits, and to proffered individual permits that have been declined by the applicant.

Several of the comments received indicated that some parties believed that the appeal process would allow an applicant to appeal the terms and conditions of an individual permit, and begin work in jurisdictional areas, while the appeal was under way. This interpretation of the appeal process is incorrect. Permit conditions are an integral part of a permit, and cannot be treated as independent actions. No regulated activity would be allowed to begin in any jurisdictional waters of the United States until the applicant has accepted all the terms and conditions of the proffered permit. In cases where an individual permit has been accepted by the applicant, and the terms and conditions of such permit are subsequently unilaterally modified by the district engineer pursuant to 33 CFR 325.7, the permit may be declined by the permittee and appealed under this process, as long as no regulated activities have taken place in waters of the United States on the project site. Permit conditions are designed to ensure that the authorized project will be constructed, operated and maintained in such way that it would not cause significant degradation of the aquatic environment, or be contrary to the public interest; or to ensure compliance with legal requirements, such as Section 401 State water quality certification conditions, and the Endangered Species Act. In the case where an applicant declines a proffered individual permit because the applicant objects to the terms and conditions of the permit, the appeal process would proceed as follows. Should the applicant object to the terms and conditions of the individual permit, the applicant must write a letter to the district engineer explaining his objections to the permit. The district engineer, upon evaluation of the applicant's objections, may: (a) modify the permit to address all of the applicant's objections, or (b) modify the permit to address some, but not all, of the applicant's objections, or (c) not modify the permit, having determined that the permit should be issued as previously written. In the event that the district engineer agrees to modify the proffered individual permit to address all of the applicant's objections, the district engineer will issue such a modified permit. Should the district engineer modify the proffered permit to address some, but not all, of the applicant's objections, the district engineer will send the applicant such a modified permit and the decision document for the project. If the district engineer does not modify the proffered permit, the district engineer will offer the unmodified permit to the applicant a second time. In all cases, the second transmittal of the permit shall include a notification of appeal (NAP) form and a request for appeal (RFA) form (see definitions in 33 CFR 331.2). If the applicant subsequently declines any modified or unmodified permit, this declined permit may be appealed to the division engineer upon submittal of a completed RFA form. The completed RFA must be received by the division engineer within 60 days of the NAP.

There were several comments concerning the scope of the review process. Several commenters recommended that the review officer (RO) consider new information, conducting, in effect, a new and independent review. Other commenters indicated that new information should be accepted only if it serves to clarify existing issues, and did not raise new issues that were not considered in the Corps original evaluation of the permit application. After careful consideration, we have decided that the review undertaken by the RO would be limited to the existing administrative record; however, the RO may seek to clarify the record through consultation with the appellant and his agent(s), the district engineer, other Federal and state agency personnel, or other parties, as described in 33 CFR 331.3 and 331.7.

Accepting new information about the project during the appeal process would constitute a fundamental change of the administrative record. Such new information might well have resulted in a different permit decision had it been presented to the district engineer during the original permit evaluation process. It is essential that new information be accepted only at the district level, so that the district engineer's decision will reflect an accurate and comprehensive analysis of the data compiled in the administrative record. Furthermore, allowing an applicant to withhold potentially critical information from the district engineer might encourage forum-shopping, if an applicant were to believe that a more favorable decision might be obtained from the division engineer than from the district engineer.

(2) The Identity and Authority of the Review Officer (RO)

Comments were received regarding the appropriate person to serve as the RO, and the extent of the RO's authority. Most comments were concerned primarily with ensuring that the RO be independent and impartial, that the process be efficient, and that the RO have the authority to change the original permit decision. Some commenters also recommended that the RO be authorized to change unilaterally a district engineer's permit denial decision.

Suggestions were also received stating that the administrative appeal process should be conducted outside of the Corps of Engineers, e.g., by contracting with private consultants, utilizing administrative law judges, or referring the appeals to another Federal agency. Several commenters expressed strong support for retaining the appeal process within the Corps, while other commenters expressed an equally strong desire to transfer the appeal process to an independent third party in order to promote impartiality, to avoid the perception of bias, and to enhance the credibility of the process.

We have given careful consideration to whether the appeal process should be administered wholly within the Corps, or whether it should be administered by an independent third party. While the perception of agency bias is a serious concern, we believe that such perceptions cannot be avoided

absolutely, and that the negative connotations are far outweighed by having the appeal process managed by people who have the most experience with the Corps of Engineers regulatory program. Moving the appeal process outside the agency, either to another Federal agency, or by contracting with the private sector, even if a Corps representative were part of the process, would severely diminish the consistency and efficiency of the appeal process, and would raise serious legal questions. The Corps regulatory program is complex, and it is unlikely that individuals outside of the agency would have the perspective and long experience with the program that would be needed to conduct a thorough, timely review. Also, given the evolving nature of the policies, laws, regulations and court decisions that have shaped the Corps regulatory program, non-Corps review officers would have to be trained and updated on a regular basis in order to stay abreast of the changes. We believe that it would be difficult to provide this recurring training to individuals outside of the Corps. Furthermore, it would be imprudent and inappropriate to transfer the appeal process to a third party, because the Corps bears the statutory responsibility for full implementation of the regulatory program. Finally, it is noted that this rule does not diminish the right of an appellant to seek redress through the Federal courts if he receives an unfavorable decision from the Corps upon completion of the administrative appeal process.

Simplification and lower program costs were also offered as reasons for transferring the process to the private sector. We are not convinced that contracting the work would be simpler or less costly than administering the process internally. Corps involvement in the appeal process would still be necessary, particularly in the case where permit denial decisions were remanded to the district engineer for reconsideration as the result of a successful appeal. Further, contract management responsibilities would remain with the Corps, and could constitute a substantial administrative burden.

Efficiency was also cited by several commenters in support of establishing the appeal process as a single level of review at the division level. We have examined the issue, and agree that the operational efficiency of the appeal process would be maximized by a one-level review of the existing administrative record.

Several commenters expressed the view that the appeal process should grant authority to the division engineer to unilaterally overturn the permit decision of the district engineer. Otherwise, it was argued, the best result an appellant could hope for would be a new, time-consuming review by the same regulatory project manager who made the original permit recommendation to the district engineer. One commenter further stated that such a process is inconsistent with the Corps own assertion that an impartial, objective review requires the final permit decision be made at the division rather than district level.

We believe that the commenters failed to appreciate the positive aspects of limiting the review to ensure that the requisite procedural steps have been followed, that no material facts have been overlooked or misinterpreted, and that the permit decision is consistent with established policies and official guidance. If the division engineer determines that the administrative record is insufficient to support the decision, or that the decision is inconsistent with a requirement of law, regulation, an Executive Order, or officially-promulgated Corps policy or guidance, the division engineer will give specific instructions to the district engineer regarding corrective actions that must be taken in reconsidering the permit decision. These instructions would ensure that the district engineer's subsequent decision would be based on proper legal, factual, procedural, and policy grounds. Remanding the decision to the district engineer for corrective action also affirms the principle that the authority to make permit decisions rests with the district engineer, who is the person ultimately responsible for implementation of the regulatory program within his district. Furthermore, from a workload management perspective, Corps district staff are better prepared than division personnel to handle the day-to-day requirements of the permit evaluation process. In addition, an administrative appeal process that required a full public interest review would be more time consuming than a review of specific issues, and would in many cases duplicate work already done at the district level. Also, if after conducting an appellate review, the division engineer has reason to believe that the permit application should not be referred back to the district engineer for a final decision, the permit application may be elevated in accordance with 33 CFR 325.8(b)(4), and the division engineer will make the permit decision.

Another commenter suggested modifying the third sentence of Section 331.3(b)(2) to provide the RO more flexibility. It was suggested that we strike the wording, ''shall not substitute their judgment for that of the Corps district (when reviewing technical issues) unless the reviewed decision was clearly erroneous or omitted a material fact,'' and replace it with, ''shall provide a recommendation on the decision that is supported by clear and convincing evidence.'' We believe that under the original language, the RO has sufficient flexibility under the review process; however, we have reworded that section to clarify the meaning.

A comment was received suggesting more involvement by Corps headquarters to assure the consistency of appealed decisions and to facilitate adjustments in policy, as may become necessary. We agree that there is a need for Corps Headquarters to monitor the appeal process, especially during the period of initial implementation, but we believe that routine, case-by-case involvement is neither warranted nor practical. Corps Headquarters will provide training to the review officers to ensure understanding of the policy and procedures, and to ensure consistency of the process. Corps Headquarters will also provide support on a case by case basis in the evaluation of appealed actions, if requested by a division engineer.

Permit decisions made by a division engineer or higher authority may be appealed to an Army official at least one level higher than the decision-maker. This higher Army official shall make the decision on the merits of the appeal, and may appoint a qualified individual to act as a review officer (as defined in Section 331.2 of this Part). References to the division engineer in this Part shall be understood as also referring to higher-level Army authority when that authority is conducting an administrative appeal.

Several commenters suggested that, because of its unique organizational structure, appeals arising from decisions in the New England Division (NED) office should be directed to Corps headquarters rather than the division engineer. The Corps has recently reorganized the division offices. The former New England Division is now the New England District, and reports to the North Atlantic Division office. The former New England Division is consequently like the other Corps districts, and there is no need to set up a separate appeal process structure for the New England regional office.

(3) The Identity and Rights of the Appellant

A number of commenters expressed concerns that the proposed

administrative appeal process would unduly restrict who may pursue an appeal, that the scope of participation by the appellant was ill-defined, and that appellants should not be required to exhaust the administrative appeal process before seeking relief in the Federal courts.

In response to the question regarding who may pursue an appeal, the Corps has decided that, since the appeal process is limited at this time to the appeal of denied permits, and to the appeal of declined individual permits, appellants are properly limited to those parties who have had their permit applications denied, or to those parties proffered an individual permit by the district engineer. Expanding the appeal rights to third parties would potentially increase the number of appealable actions by an order of magnitude or more. This would simply be unworkable. With regard to the scope of participation by the appellant, we believe that the procedures outlined in 33 CFR 331.6 and 331.7 adequately describe the scope of participation of appellants and their agents. We have also added a definition of the term ''agent(s)'' to 33 CFR 331.2. With regard to the need to exhaust the administrative appeal process before seeking relief in the Federal courts, we believe that the administrative appeal process would serve to identify and correct any procedural shortcomings of the original permit evaluation process, and can lead to a resolution of problems without the added burden to both parties of an action in the Federal courts. Furthermore, requiring an appellant to exhaust the administrative appeal process does not prevent the appellant from seeking relief in the Federal courts should the appellant not be satisfied with the outcome of the appeal.

In response to requests for clarification of who may attend site investigations and appeal conferences to provide support and representation for the appellant, the rule has been written to allow the appellant's agent(s), as defined in 33 CFR 331.2, to participate in the process. The appellant's agent(s) may participate in the appeal conference and in any site investigations, as outlined in 33 CFR 331.7.

Numerous comments were received regarding third party involvement in the administrative appeal process. A number of commenters favored limiting third party involvement to the extent provided for in the proposed rule. Other commenters requested expansion of third party involvement. It was evident from several comments that some confusion exists regarding when third parties may participate in the appeal process. In order to clarify these issues, additional language has been added to the rule in 33 CFR 331.7 and 33 CFR 331.10. The supplementary language is intended to make it clear that there is no third party involvement in the appeal process itself. However, we have provided for interested parties to be involved in those cases where the division engineer has determined that the administrative record supporting a permit denial is inadequate, and has remanded the decision to the district engineer for further consideration. In such a case, any party who commented during the original permit review process will be advised that the decision is being reconsidered, and that they may submit supplemental comments. If the noted deficiency in the administrative record is serious enough to merit issuance of a new public notice, anyone may submit comments. Under these circumstances, the public interest review is starting anew, and there is no requirement that interested parties must have participated in the original permit review process.

(4) Enforcement-Related Issues

One commenter suggested that under the proposed rule the after-the-fact (ATF) permit process should more appropriately be titled an after-the-fact ''enforcement'' process. We believe that the existing language properly identifies that a permit application is being evaluated ''after-the-fact'' for an activity that has already occurred. It would be inappropriate to use the term ''after-the-fact enforcement'' since a permit may be granted as a result of the ATF review process. In certain cases involving alleged unauthorized activities, the Corps will afford the responsible party the opportunity to apply for an ATF permit. Once any initial corrective measures have been completed and the activity otherwise meets the criteria in 33 CFR 326.3(e), evaluating an ATF permit application is an appropriate response to an unauthorized activity. If an ATF permit is issued, such permit will alleviate adverse effects to the affected water of the United States through special conditions and/or compensatory mitigation requirements. The ATF process is one of several administrative remedies available to the Corps to resolve unauthorized activities.

Several commenters responded to our proposal to amend 33 CFR 326.3(e) to require a tolling agreement as a prerequisite to filing an administrative appeal of an adverse ATF permit decision. Several commenters recommended narrowing the scope of the proposed tolling agreement. As a result of further consideration, we have determined that it would be appropriate to limit the tolling agreement, and 326.3(e) has been amended by adding subparagraph (v).

This new provision would mandate that any party alleged to have engaged in an unauthorized activity, who files an ATF permit application that the Corps processes, has thereby agreed to a tolling of the Statute of Limitations, and, in addition, must sign an agreement to that effect. Such tolling agreement would state that, in exchange for the Corps accepting the ATF permit application and, if appropriate, considering the appeal of any ATF permit denial or declined individual permit, the party has agreed that the Statute of Limitations would be tolled for one year after the final action has been taken on the ATF permit decision, or any succeeding administrative appeal of an ATF permit denial has been finalized, whichever is later. The tolling period would terminate one year after a final decision on (1) the denial of an ATF permit application; or, (2) an appeal of such a denial decision, whichever is later. The one year post-decision period is necessary in the event that the United States determines that it would be appropriate to file an action in the Federal courts to obtain a satisfactory remedy for the unauthorized activity.

The tolling agreement would also state that permit applicants will not raise a Statute of Limitations defense in any subsequent enforcement action brought by the United States, with respect to the unauthorized activity for the period of time in which the Statute of Limitations is tolled. A party will be required to sign a separate tolling agreement for each individual unauthorized activity.

One commenter asked that the third sentence in Section 331.11 be revised to read ''* * * unless the Corps receives an ATF permit * * *'' because the commenter felt the Corps could not refuse a permit application. To the contrary, the Corps may refuse a permit application when any one of four situations exist as identified in 33 CFR 326.3(e)(1). For this reason, we believe that the current language is appropriate. Another commenter recommended that an appeal initiated in response to the Corps actions on unauthorized activities should not be processed until resolution of the alleged violation. As noted earlier, although protection of the environment is one of the Corps primary goals, there are some circumstances where allowing an appeal to proceed before an enforcement action is

concluded is appropriate. Accordingly, we are convinced that this decision must remain subject to the discretion of the district engineer.

Comments were received questioning the basis of the requirement that initial corrective measures must be completed before an appeal could be accepted. One comment stated that this requirement left an appellant little recourse; a result that appeared to be contrary to the purpose of these regulations. Another believed that such a requirement was premature because it presupposes that the appeal lacks merit. We disagree with both of these arguments. First, interim corrective measures are those actions which the district engineer believes to be necessary to prevent serious jeopardy to life, property, or important public resources. We believe that when such a situation exists, the district engineer must act promptly to require initial corrective measures to ensure that any unsafe or hazardous conditions are corrected. Second, a determination to require a corrective action does not prejudice an appeal, since it does not pass any judgment on the merits of the overall project; it is simply intended to eliminate or reduce unsafe conditions while the appeal is pending. Finally, the appellant always has the option of seeking relief from the Federal courts.

The proposed rule, in Section 331.11(b), concerned the calculation of potential penalties for unauthorized activities. That provision stated that ''[A]ny penalty imposed, as determined in the appropriate forum by the appropriate decision-maker, may also include in the calculation of penalty the time period involving the appeal process.'' This provision elicited comments stating that it was both ambiguous and potentially unlawful. The Corps takes no position on the legality of this provision. However, we have omitted this provision for several reasons. First, this particular provision was somewhat ambiguous in that it was not clear whether the time period of the appeal process could be used to increase or decrease the penalties for unauthorized activities. Second, the Corps realizes that it cannot dictate to a Federal court that the time period for the appeal process must be included in determining the penalty for unauthorized activities. A court must independently weigh the facts of a particular case in order to determine the appropriate extent of penalties for that case. By omitting this language, the Corps is not waiving its right to argue before a court that the time period for the appeal process should be included in the calculation of the penalty for those unauthorized activities. This explanation serves as notice to every appellant regarding ATF permit applications that the time it takes for an appeal to be resolved by the Corps may be included in the calculation of penalties for the unauthorized activities.

(5) Suggested Procedural Changes and Clarifications for Specific Sections

Section 331.3(a): One commenter suggested including ''prompt'' with ''fair, reasonable, and effective'' in describing the administrative appeal process to emphasize the Corps commitment to timely action on appeals. We agree that timely resolution of appeals is vital to the success of this program, as is reflected by the inclusion of time frames in the rule, and have revised this section to include the word ''prompt'.

Section 331.3(a)(2): One commenter suggested including the phrase ''based on the merits of the appeal'' in the first sentence. We agree with this suggestion, and have clarified the first sentence of 33 CFR 331.3(a)(2) to reflect this suggestion.

Section 331.4: Several commenters noted that the proposed rule did not contain a list of items that must be present in the administrative record that would be the subject of an administrative appeal. Because the administrative record for individual cases varies with the nature of each proposal, we do not believe it is necessary to identify items that could be in the administrative record. Each administrative record typically contains many common elements, such as a determination of jurisdiction, the permit application and supplemental information provided by the applicant, the public notice and mailing list, comments received in response to the notice, NEPA documentation (e.g., environmental assessment) and statement of findings (or a combined decision document), 404(b)(1) Guidelines evaluation, and related documents and correspondence.

One commenter suggested that the last three proposed words of Section 331.4 be deleted. We have reworded the paragraph in order to clarify that a standard form for submission of a Request For Appeal (RFA) will be provided to the potential appellant, along with the Notification of Appeal Process (NAP) standard form.

Section 331.5: This section has been modified to clarify the criteria for consideration of an appeal. Additionally, the criteria will be clearly outlined in the RFA form sent to the affected party with the NAP.

Section 331.5(b)(1): One commenter suggested that it may not be clear to permit applicants that endorsement of a proffered individual permit indicates acceptance of the permit in its entirety, and effects a waiver of the applicant's right to appeal the terms and conditions of the permit. We acknowledge that the wording of the preamble and the proposed rule may not be clear enough. Therefore, the wording of the final rule has been modified to state clearly that the acceptance of an individual permit results in the waiver of an applicant's right to appeal the terms and conditions of the permit. This provision will also be explained in the notification of applicant options (NAO) form attached to the proffered individual permit sent to an applicant.

Section 331.6: One commenter suggested that we change the rule so that the RFA must be filed within 60 days of the date that the applicant receives the NAP, rather than within 60 days of the date of the NAP. We have retained the wording of the proposed rule, because it allows the 60 day time period to be measured from a clear and verifiable date, whereas the date of receipt by the applicant would be difficult to verify.

One commenter suggested that it would be difficult for appellants to provide their reasons for appealing a permit denial within 60 days unless the Corps provides a rationale for the permit denial as part of the denial notification. In response to this request, the district engineer will provide a copy of the decision document with the NAP where the permit application has been denied. In response to one commenter who requested that permit decisions be made available to the public, permit decisions are currently available to the public under standard Freedom of Information Act procedures.

Section 331.7(d): Several commenters suggested that the RO should be required to notify the appellant a minimum number of days prior to the date of the appeal conference to ensure that the appellant has sufficient time to schedule and attend the meeting. We agree, and have incorporated a requirement into the rule that provides that the appellant be given 15 days notification of the date of the appeal conference (see 33 CFR 331.7(d)(1)).

One commenter suggested that it be made mandatory that complete transcripts be prepared for all presentations and discussions occurring during the appeal conference. We do not agree with that suggestion, because we believe that the cost of doing so would be burdensome, and that requiring transcripts would considerably delay the appeal process. However, we have required that the RO prepare a

memorandum for the record (MFR) to document the appeal conference (See 331.7(d)(7).) We believe that this process is adequate and not unduly burdensome or costly.

Section 331.7(e): One commenter suggested that the RO be allowed to communicate with both the appellant and the Corps district during the appeal process. Another commenter concurred with our initial proposal to prohibit any conversations between the RO and the parties to the appeal, and also suggested that the regulation should explicitly prohibit any conversations regarding the appeal between the RO and any third party. The final rule has been revised to allow the RO to communicate with all parties to the appeal, as well as outside sources. (See Sections 331.7(d) and 331.3(b)(2).) We anticipate that the RO may need to question the appellant and the Corps district staff to clarify the administrative record, and may also need to consult with technical experts, Corps Headquarters staff, Corps Office of Counsel, or other ROs, if the appeal raises technical issues, questions of national policy, interpretation of regulations, or legal or programmatic concerns.

Section 331.8(b): Several commenters suggested that a specific time period be included for soliciting comments from agencies and interested parties following a determination by the division engineer to remand the permit denial decision to the district engineer for reconsideration. Some commenters suggested a minimum of 15 days for opportunity to comment. We have provided additional information on time frames in this rule (see Section 331.10(b).) We have also clarified that where the reconsideration by the district engineer may involve substantial changes in the potential impacts of the project, a new public notice will be issued in accordance with the provisions of 33 CFR Part 325.

Some commenters suggested that there be an absolute time limit of 30 to 45 days for the district engineer to make a final decision on a remanded permit denial. We share the desire of the commenters for timely decisions; however, appealed permit denial cases are likely to be controversial, and/or may involve difficult issues that will require further agency coordination and public participation. Since we cannot anticipate all such issues and circumstances, we have elected not to establish any deadlines for the reconsideration of decisions remanded to the district engineer.

Section 331.10: Some commenters recommended that the district engineer not be required to re-open the public interest review process on remand of a permit denial decision. Another recommended that the public interest review process be re-opened for all remanded permit decisions. Depending on the issues raised in each remanded permit decision, there may be laws, regulations or other guidance that would require the re-opening of the public interest review process, including opportunity for comments from the public and/or Federal and State agencies. Therefore, we are neither requiring nor prohibiting this practice, but are retaining the original wording that makes this determination subject to the discretion of the district engineer.

One commenter suggested that the rule be clarified regarding the 404(q) elevation process. The administrative appeal regulation does not change any authorities or requirements of Section 404(q) of the Clean Water Act. Currently the U.S. Army Corps of Engineers has Memoranda of Agreement, under Section 404(q), with EPA, FWS and NMFS whereby policy issues and certain permit decisions can be elevated to higher headquarters for a decision. This regulation does not affect the Section 404(q) MOA elevation process. Specifically, policy issues can be raised at any time and the Corps will send Notice of Intent to Issue letters at the end of the appeal process for any permit decision that qualifies pursuant to the Section 404(q) MOAs. We have added a statement to the end of Section 331.10(b) to clarify that nothing in this rule precludes the agencies' authorities pursuant to Section 404(q) of the Clean Water Act.

(6) General Expressions of Opposition and Support

A number of comments were received related to the estimated costs of administering the proposed administrative appeal process. One commenter indicated that our estimated costs were too low. Two commenters said that our estimated costs were too high. Though the Corps has not had any experience with such a program, we believe that our original cost estimates are reasonable. It is probable that, at the start of the appeal process implementation period, there may be a greater number of appeals than we anticipate. Consequently, the appeal process may be slower than desired due to the workload. We anticipate that as the appeal process matures, appellants will be less inclined to file appeals in questionable or speculative cases, since there will be an established record of consistent regional and national decisions, and ROs will have become increasingly proficient in implementing the appeal process as they gain experience. We will continually evaluate the cost and results of our appeal process. This evaluation may result in future adjustments to ensure that costs of the appeal process are minimized, and that the consistency, efficiency and timeliness of our decisions are maximized.

III. Exhaustion of Administrative Remedies

In *Darby* v. *Cisneros*, 113 S.Ct. 2539 (1993), the Supreme Court recently held that persons subject to Federal agency regulation need not exhaust administrative remedies before filing a lawsuit in Federal district court, unless a statutory or regulatory provision requires such exhaustion. In response to *Darby* v. *Cisneros*, the Corps is including section 331.12 in this rule to make it explicit that persons dissatisfied with permit decisions must avail themselves of the administrative appeal process established in this rule, and have received a final Corps decision on the merits of the appeal, prior to seeking redress in the Federal courts.

IV. Application of Rule to Prior Regulatory Decisions

Affected parties may appeal permit denial decisions and declined permits where the permit denial or proffered individual permit occurs after March 9, 1999. Such requests will be accepted for administrative appeal in accordance with this regulation. Permit denials or proffered permits that were transmitted in writing to an affected party prior to the publication date of the final regulation will not be accepted under the appeal process. Additionally, if large numbers of RFAs are received under this provision, an RO may delay the initiation of processing an RFA for up to 6 months after the effective date of these regulations, if necessary.

One commenter asked whether the availability of an administrative appeal process would affect in-process litigation, initiated in response to a permit denied with prejudice after the date of the publication of the final rule in the **Federal Register**. That is, would this rule render the case as not ripe for judicial review. The appeal of permit denials and declined individual permits will be accepted by the Corps starting on today's date. Therefore, applicants must use the appeal process as of today's date and exhaust such administrative processes before seeking relief in the Federal courts. Furthermore, in it's discretion, the United States may agree to a suspension of on-going litigation if the litigant wishes to seek relief through initiation

of an administrative appeal, and if the government believes that such a suspension would be appropriate. The suspension of litigation to pursue an administrative appeal will not be construed as a waiver of any right to resume litigation in the event that an administrative remedy acceptable to the applicant is not achieved.

V. Environmental Documentation

We have determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, because the Corps has prepared appropriate environmental documentation, including an Environmental Impact Statement (EIS) when required, for all permit decisions. Therefore, environmental documentation under the National Environmental Policy Act (NEPA) is not required for this rule. Moreover, this proposed regulation for administrative appeals only establishes a one-level review for denied permits and declined individual permits, as needed to ensure that applicable regulations, policies, practices, and procedures (including the preparation of appropriate environmental documentation) have been appropriately followed.

VI. Executive Order 12291 and the Regulatory Flexibility Act

The Corps does not believe that this final rule meets the definition of a major rule under Executive Order 12291, and we therefore do not believe that a regulatory impact analysis is required. This final rule should reduce the burden on the public by offering an administrative appeal process for certain Corps decisions, and, in some instances, should allow the applicant to avoid the more time-consuming and costly alternative of challenging a Corps permit decision in the Federal courts.

We also do not believe that this final rule will have a significant impact on a substantial number of small entities pursuant to Section 605(b) of the Regulatory Flexibility Act of 1980, because this final rule only creates an optional review of certain decisions through an administrative appeal process. The final rule should be less time consuming and less costly to permit applicants who want to appeal a decision with which they disagree, but currently can only seek to have the decision reviewed through the Federal courts. Furthermore, since the administrative appeal would be optional at the applicant's or landowner's discretion, we have minimized the potential of any increased regulatory burden on small entities. If an applicant or landowner chooses to forego an appeal, the net effect of the final rule would be zero.

Note 1: The term ''he'' and its derivatives used in these regulations are generic and should be considered as applying to both male and female.

List of Subjects

33 CFR Part 320

Environmental protection, Intergovernmental relations, Navigation, Water pollution control, Waterways.

33 CFR Part 326

Investigations, Intergovernmental relations, Law enforcement, Navigation, Water pollution control, Waterways.

33 CFR Part 331

Administrative appeal, Navigation, Waterways, Environmental protection, Water pollution control.

Dated: March 3, 1999.

Joseph W. Westphal,

Assistant Secretary of the Army (Civil Works), Department of the Army.

Comments regarding new levels of bureaucracy and the legality of the proposed rule were adequately addressed in the preamble to the proposed rule. As noted in the preamble to this final rule, numerous substantive and procedural changes have been adopted as a result of the comments received. Accordingly, 33 CFR Parts 320 and 326 are hereby amended and 33 CFR Part 331 is added as follows:

PART 320—GENERAL REGULATORY POLICIES

1. The authority citations for Part 320 continue to read as follows:

Authority: 33 U.S.C. 401 *et seq.*; 33 U.S.C. 1344; 33 U.S.C. 1413.

2. Section 320.1(a)(2) is amended by revising the final sentence to read as set forth below.

§ 320.1 Purpose and Scope.

(a) * * *

(2) * * * A district engineer's decision on a permit denial or a declined individual permit is subject to an administrative appeal by the affected party in accordance with the procedures and authorities contained in 33 CFR Part 331. Such administrative appeal must meet the criteria in 33 CFR 331.5; otherwise, no administrative appeal of that decision is allowed. The terms ''permit denial'' and ''declined permit'' are defined at 33 CFR 331.2. There shall be no administrative appeal of any issued individual permit that an applicant has accepted, unless the authorized work has not started in waters of the United States, and that issued permit is subsequently modified by the district engineer pursuant to 33 CFR 325.7 (see 33 CFR 331.5(b)(1)). An applicant must exhaust any administrative appeal available pursuant to 33 CFR Part 331 and receive a final Corps decision on his permit application prior to filing a lawsuit in the Federal courts based on a permit denial, or the terms and conditions of a declined permit.

PART 326—ENFORCEMENT

1. The authority citations for Part 326 continue to read as follows:

Authority: 33 U.S.C. 401 *et seq.*; 33 U.S.C. 1344; 33 U.S.C. 1413.

2. Section 326.3(e) is amended by adding a new paragraph (e)(1)(v) to read as follows:

§ 326.3 Unauthorized Activities.

* * * * *

(e) * * *

(1) * * *

(v) No after-the-fact permit application will be accepted unless and until the applicant has furnished a signed statute of limitations tolling agreement to the district engineer. A separate statute of limitations tolling agreement will be prepared for each unauthorized activity. Any person who applies for an after-the-fact permit, where the application is accepted and processed by the Corps, thereby agrees that the statute of limitations regarding any violation associated with that application is tolled until one year after the final Corps decision, as defined at 33 CFR 331.10. Moreover, the applicant for an after-the-fact permit must also memorialize that agreement to toll the statute of limitations, by signing an agreement to that effect, in exchange for the Corps acceptance of the after-the-fact permit application, and/or any administrative appeal. Such agreement will state that, in exchange for the Corps acceptance of any after-the-fact permit application and/or any administrative appeal associated with the unauthorized activity, the responsible party agrees that the statute of limitations will be tolled until one year after the final Corps decision on the after-the-fact permit application or, if there is an administrative appeal, one year after the final Corps decision as defined at 33 CFR 331.10, whichever date is later.

Part 331 is added to read as follows:

PART 331—ADMINISTRATIVE APPEAL PROCESS

Sec.
331.1 Purpose and policy.
331.2 Definitions.

331.3 Review officer.
331.4 Notification of appealable actions.
331.5 Criteria.
331.6 Filing an appeal.
331.7 Review procedures.
331.8 Timeframes for final appeal decisions.
331.9 Final appeal decision.
331.10 Final Corps decision.
331.11 Unauthorized activities.
331.12 Exhaustion of administrative remedies.
Appendix A—Administrative Appeal Proces.
Appendix B—Applicant Options with Proffered Individual Permit.

Authority: 33 U.S.C. 401 et seq.; 33 U.S.C. 1344; 33 U.S.C. 1413.

§ 331.1 Purpose and policy.

(a) *General.* The purpose of this Part is to establish policies and procedures to be used for the administrative appeal of permit applications denied with prejudice, and for the administrative appeals of declined individual permits. The appeal process will allow the affected party to pursue an administrative appeal of certain final Corps of Engineers decisions with which they disagree. The basis for an appeal, and the specific policies and procedures of the appeal process, are described in the following sections. It shall be the policy of the Corps of Engineers to promote and maintain an administrative appeal process that is independent, objective, fair, prompt, and efficient.

(b) This administrative appeal process provides only for the appeal of permit denials or declined individual permits.

(c) Permit decisions made by a division engineer or higher authority may be appealed to an Army official at least one level higher than the decision-maker. This higher Army official shall make the decision on the merits of the appeal, and may appoint a qualified individual to act as a review officer (as defined in § 331.2 of this Part). References to the division engineer in this Part shall be understood as also referring to higher-level Army authority when that authority is conducting an administrative appeal.

§ 331.2 Definitions.

The terms and definitions contained in 33 CFR Parts 320 through 330 are applicable to this regulation. In addition, the following terms are defined for the purposes of Part 331:

Affected party means a permit applicant who has received a permit denial, or who has declined a proffered individual permit.

Agent(s) means the affected party's business partner, attorney, consultant, engineer, planner, or any individual with legal authority to represent the appellant's interests.

Appealable action means a permit denial, or a declined individual permit, as these terms are defined below.

Appellant means an affected party who has filed an appeal of a permit denial or declined individual permit under the criteria and procedures of these regulations.

Declined permit means a proffered individual permit, including a letter of permission, that an applicant has refused to accept, because he has objections to the terms and conditions therein. A declined permit can also be an individual permit that the applicant originally accepted, but where such permit was subsequently modified by the district engineer, pursuant to 33 CFR 325.7, in such a manner that the resulting permit contains terms and conditions that lead the applicant to decline the modified permit, provided that the applicant has not started work in waters of the United States authorized by such permit. Where an applicant declines a permit (either initial or modified), the applicant does not have a valid permit to conduct regulated activities in waters of the United States, and must not begin construction of the work requiring a Corps permit unless and until the applicant receives and accepts a valid Corps permit.

Denial determination means a letter from the district engineer detailing the reasons a permit was denied with prejudice. The decision document for the project will be attached to the denial determination in all cases.

Notification of Applicant Options (NAO) means a fact sheet explaining an applicant's options with a proffered individual permit under the administrative appeal process.

Notification of Appeal Process (NAP) means a fact sheet that explains the criteria and procedures of the administrative appeal process. Every permit denial, and every proffered individual permit returned to the applicant for reconsideration after review by the district engineer in accordance with § 331.6(b), will have an NAP form attached.

Permit denial means a written denial with prejudice (see 33 CFR 320.4(j)) of an individual permit application as defined in 33 CFR 325.5(b).

Request for appeal (RFA) means the affected party's official request to initiate the appeal process. The RFA must include the name of the affected party, the Corps file number of the denied or declined individual permit application, the reason(s) for the appeal, and any supporting data and information. A grant of right of entry for the Corps to the project site is a condition of the RFA. A standard RFA form will be provided to the affected party with the NAP form. The affected party initiates the administrative appeal process by completing the RFA and returning it to the appropriate Corps of Engineers division office.

Review officer (RO) means the Corps official responsible for assisting the division engineer or higher authority responsible for rendering the final decision on the merits of an appeal.

§ 331.3 Review officer.

(a) *Authority.* (1) The division engineer has the authority and responsibility for administering a fair, reasonable, prompt, and effective administrative appeal process. The division engineer may act as the review officer (RO), or may delegate, either generically or on a case-by-case basis, any authority or responsibility described in this Part as that of the RO. However, the division engineer may not delegate any authority or responsibility described in this Part as that of the division engineer. Regardless of any delegation of RO authority or responsibility, the division engineer retains overall responsibility for the administrative appeal process.

(2) The RO will assist the division engineer in reaching and documenting the division engineer's decision on the merits of an appeal, if the division engineer has delegated this responsibility as explained above. The division engineer has the authority to make the final decision on the merits of the appeal. Neither the RO nor the division engineer has the authority to make a final decision to issue or deny any particular permit, pursuant to the administrative appeal process established by this Part. The authority to issue or deny permits remains with the district engineer. However, the division engineer may exercise the authority at 33 CFR 325.8(c) to elevate any permit application, and subsequently to make the final permit decision. In such a case, any appeal process of the district engineer's initial decision is terminated. If a particular permit application is elevated to the division engineer pursuant to 33 CFR 325.8(c), and the division engineer's decision on the permit application is a permit denial, or results in a declined permit, that permit denial or declined permit would be subject to an administrative appeal to the Chief of Engineers.

(3) *Qualifications.* The RO will be a Corps employee with extensive knowledge of the Corps regulatory program. Where the permit decision being appealed was made by the division engineer or higher authority, a

Corps official at least one level higher than the decision-maker shall make the decision on the merits of the RFA, and this Corps official shall appoint a qualified individual as the RO to conduct the appeal process.

(b) *General.* (1) *Independence.* The RO will not perform, or have been involved with, the preparation, review, or decision-making of the action being appealed. The RO will be independent and impartial in reviewing any appeal, and when assisting the division engineer to make a decision on the merits of the appeal.

(2) *Review.* The RO will conduct an independent review of the administrative record to address the reasons for the appeal cited by the applicant in the RFA. In addition, to the extent that it is practicable and feasible, the RO will also conduct an independent review of the administrative record to verify that the record provides an adequate and reasonable basis supporting the district engineer's decision, that facts or analysis essential to the district engineer's decision have not been omitted from the administrative record, and that all relevant requirements of law, regulations, and officially-promulgated Corps policy guidance have been satisfied. Should the RO require expert advice regarding any subject, he may seek such advice from any employee of the Corps or of another Federal or state agency, or from any recognized expert, so long as that person had not been previously involved in the action under review.

§ 331.4 Notification of appealable actions.

Affected parties will be notified in writing of a Corps decision on an appealable action. For permit denials, the notification must include a copy of the decision document for the permit application, an NAP fact sheet and an RFA form. For proffered individual permits, when the initial proffered permit is sent to the applicant, the notification must include an NAO fact sheet. For declined permits (*i.e.*, proffered individual permits that the applicant refuses to accept and sends back to the Corps), the notification must include an NAP fact sheet and an RFA form. Additionally, an affected party has the right to obtain a copy of the administrative record.

§ 331.5 Criteria.

(a) *Criteria for Appeal.* (1) *Submission of RFA.* The appellant must submit a completed RFA (as defined at § 331.2) to the appropriate division office in order to appeal a permit denial, or a declined individual permit. An individual permit that has been signed by the applicant, and subsequently unilaterally modified by the district engineer pursuant to 33 CFR 325.7, may be appealed under this process, provided that the applicant has not started work in waters of the United States authorized by the permit. The RFA must be received by the division engineer within 60 days of the date of the NAP.

(2) *Reasons for appeal.* The reason(s) for requesting an appeal of a permit denial, or a declined individual permit, must be specifically stated in the RFA, and must be more than a simple request for appeal because the affected party did not like the permit decision, or the permit conditions. Examples of reasons for appeals include, but are not limited to, the following: a procedural error, an incorrect application of law, regulation or officially-promulgated policy, omission of material fact, incorrect application of the Section 404(b)(1) Guidelines, or use of incorrect data.

(b) *Actions not appealable.* An action or decision is not subject to an administrative appeal under these regulations if it falls into one or more of the following categories:

(1) an individual permit decision (including a letter of permission or an individual permit with special conditions), where the permit has been accepted and signed by the permittee. By signing the permit, the applicant waives all right to appeal the terms and conditions of the permit, unless the authorized work has not started in waters of the United States, and that issued permit is subsequently modified by the district engineer pursuant to 33 CFR 325.7;

(2) any site specific matter that has been the subject of a final decision of the Federal courts;

(3) a final Corps decision that has resulted from additional analysis and evaluation, as directed by a final appeal decision;

(4) a permit denial without prejudice or a declined permit, where the controlling factor cannot be changed by the Corps decision-maker (e.g., the requirements of a binding statute, regulation, state Section 401 water quality certification, state Coastal Zone Management Act disapproval, etc. (See 33 CFR 320.4(j));

(5) a permit denial case where the applicant has subsequently modified the proposed project, because this would constitute an amended application that would require a new public interest review, rather than an appeal of the existing record and decision; or

(6) any request for the appeal of a denied permit or a declined individual permit, where the RFA has not been received by the division engineer within 60 days of the date of the NAP.

§ 331.6 Filing an appeal.

(a) An affected party appealing a permit denial or declined permit must submit an RFA that is received by the division engineer within 60 days of the date of the NAP. A flow chart of the appeal process is shown in Appendix A.

(b) In the case where an applicant objects to a proffered individual permit, the appeal process proceeds as follows. To initiate the appeal process regarding the terms and conditions of the permit, the applicant must write a letter to the district engineer explaining his objections to the permit. The district engineer, upon evaluation of the applicant's objections, may: modify the permit to address all of the applicant's objections, or modify the permit to address some, but not all, of the applicant's objections, or not modify the permit, having determined that the permit should be issued as previously written. In the event that the district engineer agrees to modify the proffered individual permit to address all of the applicant's objections, the district engineer will issue such modified permit, enclosing an NAP form as well. Should the district engineer modify the proffered individual permit to address some, but not all, of the applicant's objections, the district engineer will send the applicant such modified permit, an NAP form, and the decision document for the project. If the district engineer does not modify the proffered individual permit, the district engineer will offer the unmodified permit to the applicant a second time, enclosing an NAP form and a copy of the decision document. If the applicant still has objections, the applicant may decline such modified or unmodified permit; this declined individual permit may be appealed to the division engineer upon submittal of a complete RFA form. The completed RFA must be received by the division engineer within 60 days of the NAP. A flow chart of an applicant's options for a proffered individual permit is shown in Appendix B.

(c) The district engineer may not delegate his signature authority to deny the permit with prejudice, or to return an individual permit to the applicant with unresolved objections (see §§ 331.6 (b)(ii) and 331.6(b)(iii)).

(d) Affected parties may appeal permit denials or declined individual permits where the permit denial or the proffered individual permit occurs after March 9, 1999, but may not appeal permit denials or declined permits where the Corps took that action before March 9, 1999. All appeals must meet

the criteria set forth in § 331.5 of this Part.

§ 331.7 Review procedures.

(a) *General.* The administrative appeal process for permit denials and declined individual permits is a one level appeal, normally to the division engineer. The appeal process will normally be conducted by the RO. The RO will document the appeal process, and assist the division engineer to make a decision on the merits of the appeal. The division engineer may participate in the appeal process as the division engineer deems appropriate. The division engineer will make the decision on the merits of the appeal, and provide any instructions, as appropriate, to the district engineer.

(b) *Requests for the appeal of permit denials or declined individual permits.* Upon receipt of an RFA, the Corps shall review the RFA and the administrative record to determine whether the request meets the criteria for appeal. If the RFA meets the criteria for appeal, the RO will so notify the appellant in writing within 30 days of the receipt of the RFA. If the RO believes that the RFA does not meet the criteria for appeal (see § 331.5), the RO will make a recommendation on the RFA to the division engineer. If the division engineer determines that the RFA is not acceptable, the division engineer will notify the appellant of this determination by a certified letter detailing the reason(s) why the appeal failed to meet the criteria for appeal. No further administrative appeal is available, unless the appellant revises the RFA to correct the deficiencies noted in the division engineer's letter. The revised RFA must be received by the division engineer within 30 days of the date of the certified letter refusing the initial RFA. If the Corps determines that the revised RFA still fails to meet the criteria for appeal, the division engineer will notify the appellant of this determination by a certified letter within 30 days of the date of the receipt of the revised RFA, and will advise the appellant that the matter is not eligible for appeal. No further RFAs will be accepted after this point.

(c) *Site Investigations.* Within 30 days of receipt of a complete RFA, the RO should determine if a site investigation is needed to clarify the administrative record. The RO should conduct any such site investigation within 60 days of receipt of a complete RFA. The RO may also conduct a site investigation at the request of the appellant, provided the RO has determined that such an investigation would be of benefit in interpreting the administrative record. The appellant and the appellant's authorized agent(s) must be provided an opportunity to participate in any site investigation, and will be given 15 days notice of any site investigation. The RO will attempt to schedule the site investigation at the earliest practicable time acceptable to both the RO and the appellant. The site investigation should be scheduled in conjunction with the appeal review conference, where practicable. The RO, the appellant, the appellant's agent(s) and the Corps district staff are authorized participants at the site investigation. The RO may also invite any other party the RO has determined to be appropriate, such as any technical experts consulted by the Corps.

(d) *Appeal Conference.* Conferences held in accordance with this rule will be informal, and will be chaired by the RO. The purpose of the appeal conference is to provide a forum that allows the participants to discuss freely all relevant issues and material facts associated with the appeal. An appeal conference will be held for every appeal of a permit denial or a declined individual permit, unless the RO and the appellant mutually agree to forego a conference. The conference will take place within 60 days of receipt of an acceptable RFA, unless the RO determines that unforeseen or unusual circumstances require scheduling the conference for a later date. The purpose of the conference will be to allow the appellant and the Corps district representatives to discuss supporting data and information on issues previously identified in the administrative record, and to allow the RO the opportunity to clarify elements of the administrative record. Presentations by the appellant and the Corps district representatives may include interpretation, clarification, or explanation of the legal, policy, and factual bases for their positions. The conference will be governed by the following guidelines:

(1) *Notification.* The RO will set a date, time, and location for the conference. The RO will notify the appellant and the Corps district office in writing within 30 days of receipt of the RFA, and not less than 15 days before the date of the conference.

(2) *Facilities.* The conference will be held at a location that has suitable facilities and that is reasonably convenient to the appellant, preferably in the proximity of the project site. Public facilities available at no expense are preferred. If a free facility is not available, the Corps will pay the cost for the facility.

(3) *Participants.* The RO, the appellant, the appellant's agent(s) and the Corps district staff are authorized participants in the conference. The RO may also invite any other party the RO has determined to be appropriate, such as any technical experts consulted by the Corps, adjacent property owners or Federal or state agency personnel to clarify elements of the administrative record. The division engineer and/or the district engineer may attend the conference at their discretion. If the appellant or his authorized agent(s) fail to attend the appeal conference, the appeal process is terminated, unless the RO excuses the appellant for a justifiable reason. Furthermore, should the process be terminated in such a manner, the district engineer's original decision on the appealed action will be sustained.

(4) *The role of the RO.* The RO shall be in charge of conducting the conference. The RO shall open the conference with a summary of the policies and procedures for conducting the conference. The RO will conduct a fair and impartial conference, hear and fully consider all relevant issues and facts, and seek clarification of any issues of the administrative record, as needed, to allow the division engineer to make a final determination on the merits of the appeal. The RO will also be responsible for documenting the appeal conference.

(5) *Appellant rights.* The appellant, and/or the appellant's authorized agent(s), will be given a reasonable opportunity to present the appellant's views regarding the subject permit denial or declined permit.

(6) *Subject matter.* The purpose of the appeal conference will be to discuss the reasons for appeal contained in the RFA. Any material in the administrative record may be discussed during the conference, but the discussion should be focused on relevant issues needed to address the reasons for appeal contained in the RFA. The RO may question the appellant or the Corps representatives with respect to interpretation of particular issues in the record, or otherwise to clarify elements of the administrative record. Issues not identified in the administrative record by the date of the NAP for the application may not be raised or discussed, because substantive new information or project modifications would be treated as a new permit application (see § 331.5(b)(5)).

(7) *Documentation of the appeal conference.* The appeal conference is an informal proceeding, intended to provide clarifications and explanations of the administrative record for the RO and the division engineer; it is not intended to supplement the administrative record. Consequently,

the proceedings of the conference will not be recorded verbatim by the Corps or any other party attending the conference, and no verbatim transcripts of the conference will be made. However, after the conference, the RO will write a memorandum for the record (MFR) summarizing the presentations made at the conference, and will provide a copy of that MFR to the division engineer, the appellant, and the district engineer.

(8) *Appellant costs.* The appellant will be responsible for his own expenses for attending the appeal conference.

(e) *Basis of decision and communication with the RO.* The appeal of a permit denial or a declined individual permit is limited to the information contained in administrative record by the date of the NAP for the application, the proceedings of the appeal conference, and any relevant information gathered by the RO as described in § 331.5 of this Part. Neither the appellant nor the Corps may present new information not already contained in the administrative record, but both parties may interpret, clarify or explain issues and information contained in the record.

(f) *Applicability of appeal decisions.* Because a decision to deny or condition a permit depends on the facts, circumstances, and physical conditions particular to the specific project and site being evaluated, appeal decisions would be of little or no precedential utility. Therefore, an appeal decision of the division engineer is applicable only to the instant appeal, and has no other precedential effect. Such a decision may not be cited in any other administrative appeal, and may not be used as precedent for the evaluation of any other permit application. While administrative appeal decisions lack precedential value and may not be cited by an appellant or a district engineer in any other appeal proceeding, the Corps goal is to have the Corps regulatory program operate as consistently as possible, particularly with respect to interpretations of law, regulation, an Executive Order, and officially-promulgated policy. Therefore, a copy of each appeal decision will be forwarded to Corps Headquarters; those decisions will be periodically reviewed at the headquarters level for consistency with law, Executive Orders and policy. Additional official guidance will be issued as necessary to maintain or improve the consistency of the Corps' appellate and permit decisions.

§ 331.8 Timeframes for final appeal decisions.

The Corps will make a final decision on the merits of the appeal at the earliest practicable time, in accordance with the time limits set forth below. The administrative appeal process is initiated by the receipt of an RFA by the division engineer. The Corps will review the RFA to determine whether the action is appealable. If the division engineer determines that the action is not appealable, the division engineer will notify the appellant accordingly within 30 days of the receipt of the RFA. If the division engineer determines that the action is appealable and the RFA is complete, the RO will request the administrative record from the district engineer. The division engineer will make a final decision on the merits of the appeal within 90 days of the receipt of the complete RFA.

§ 331.9 Final appeal decision.

(a) In accordance with the authorities contained in § 331.3(b), the division engineer will make a decision on the merits of the appeal. While reviewing an appeal and reaching a decision on the merits of an appeal, the division engineer can consult with or seek information from any person, including the district engineer.

(b) The division engineer will disapprove the entirety of or any part of the district engineer's decision only if he determines that the decision on some relevant matter was arbitrary, capricious, an abuse of discretion, not supported by substantial evidence in the administrative record, or plainly contrary to a requirement of law, regulation, an Executive Order, or officially-promulgated Corps policy guidance. The division engineer will not attempt to substitute his judgment for that of the district engineer regarding a matter of fact, so long as the district engineer's determination was supported by substantial evidence in the administrative record, or regarding any other matter if the district engineer's determination was reasonable and within the zone of discretion delegated to the district engineer by Corps regulations. The division engineer may instruct the district engineer on how to correct any procedural error that was prejudicial to the appellant (i.e., that was not a ''harmless'' procedural error), or to reconsider the decision where any essential part of the district engineer's decision was not supported by accurate or sufficient information, or analysis, in the administrative record. The division engineer will document his decision on the merits of the appeal in writing, and provide a copy of this decision to the applicant (using certified mail) and the district engineer.

(c) The final decision of the division engineer on the merits of the appeal will conclude the administrative appeal process, and this decision will be filed in the administrative record for the project.

§ 331.10 Final Corps decision.

The final Corps decision on a permit application is the initial decision to issue or deny a permit, unless the permittee submits an RFA, and the division engineer accepts the RFA, pursuant to this Part. The final Corps decision on an appealed action is as follows:

(a) If the division engineer determines that the appeal is without merit, the final Corps decision is the district engineer's letter advising the applicant that the division engineer has decided that the appeal is without merit, and confirming the district engineer's initial permit decision; or

(b) If the division engineer determines that the appeal has merit, the final Corps decision is the district engineer's decision made pursuant to the division engineer's remand of the appealed action. The division engineer will remand the decision to the district engineer with specific instructions to review the administrative record, and to further analyze or evaluate specific issues. If the district engineer determines that the effects of the district engineer's reconsideration of the administrative record would be narrow in scope and impact, the district engineer must provide notification only to those parties who commented or participated in the original review, and would allow 15 days for the submission of supplemental comments. Where the district engineer determines that the effect of the district engineer's reconsideration of the administrative record would be substantial in scope and impact, the district engineer's review process will include issuance of a new public notice, and/or preparation of a supplemental environmental analysis and decision document (see 33 CFR 325.7). Subsequently, the district engineer's decision made pursuant to the division engineer's remand of the appealed action becomes the final Corps action. Nothing in this rule precludes the agencies' authorities pursuant to Section 404(q) of the Clean Water Act.

§ 331.11 Unauthorized activities.

Permit denials and declined individual permits associated with after-the-fact permit applications are appealable actions for the purposes of these regulations. If the Corps accepts

an after-the-fact permit application, an administrative appeal of a permit denial or declined individual permit may be filed and processed in accordance with these regulations subject to the provisions of paragraphs (a), (b), and (c) of this section.

(a) *Initial Corrective Measures*. If the district engineer determines that initial corrective measures are necessary pursuant to 33 CFR 326.3(d), an RFA for an appealable action will not be accepted by the Corps, until the initial corrective measures have been completed to the satisfaction of the district engineer.

(b) *Penalties*. If an affected party requests, under this Section, an administrative appeal of an appealable action prior to the resolution of the unauthorized activity, and the division engineer determines that the appeal has no merit, the responsible party remains subject to any civil, criminal, and administrative penalties as provided by law.

(c) *Tolling of Statute of Limitations*. Any person who applies for an after-the-fact permit, where the application is accepted and processed by the Corps, thereby agrees that the statute of limitations regarding any violation associated with that application is tolled until one year after the final Corps decision, as defined at 33 CFR 331.10. Moreover, the applicant for an after-the-fact permit must also memorialize that agreement to toll the statute of limitations, by signing an agreement to that effect, in exchange for the Corps acceptance of the after-the-fact permit application, and/or any administrative appeal(See 33 CFR 326.3(e)(1)(v).) No after-the-fact permit application or administrative appeal will be accepted until such written tolling agreement is furnished to the district engineer.

§ 331.12 Exhaustion of administrative remedies.

No affected party may file a legal action in the Federal courts based on a permit denial or declined individual permit until after a final Corps decision has been made and the appellant has exhausted all applicable administrative remedies under this Part. The appellant is considered to have exhausted all administrative remedies when a final Corps decision is made in accordance with § 331.10 of this Part.

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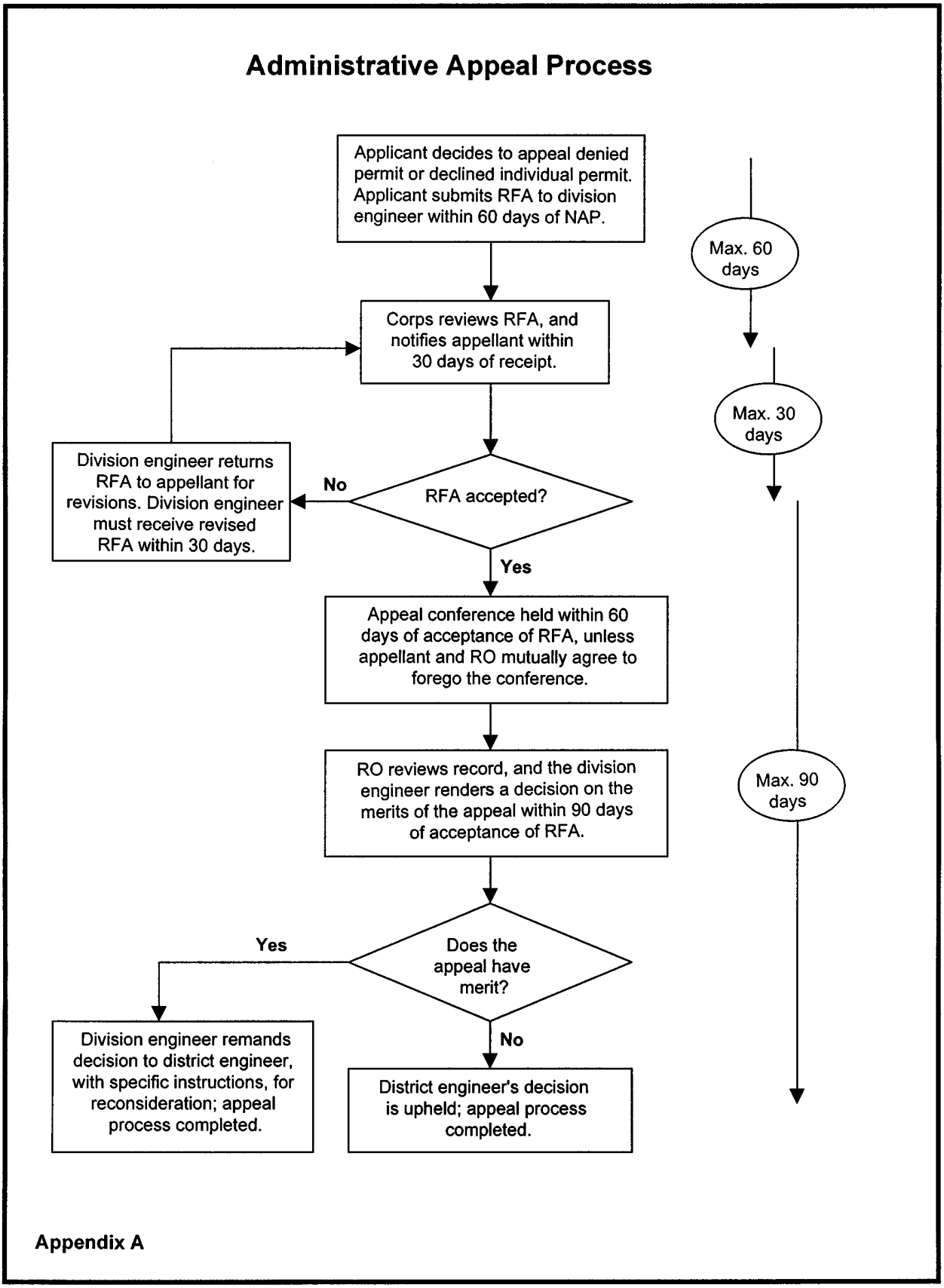
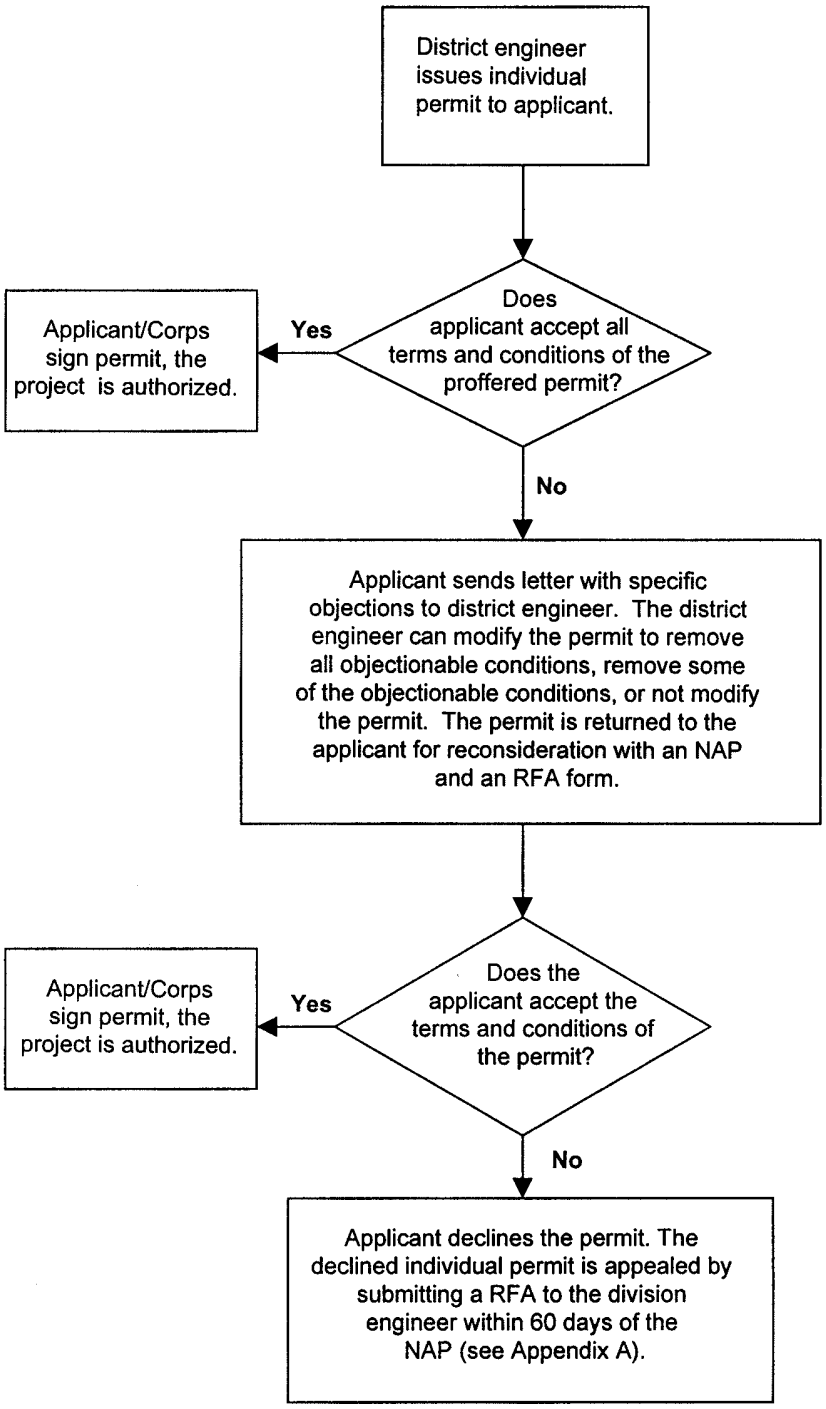

Administrative Appeal Process
Applicant decides to appeal denied permit or declined individual permit. Applicant submits RFA to division engineer within 60 days of NAP.
Max. 60 days
Corps reviews RFA, and notifies appellant within 30 days of receipt.
Max. 30 days
Division engineer returns RFA to appellant for revisions. Division engineer must receive revised RFA within 30 days.
No
RFA accepted?
Yes
Appeal conference held within 60 days of acceptance of RFA, unless appellant and RO mutually agree to forego the conference.
RO reviews record, and the division engineer renders a decision on the merits of the appeal within 90 days of acceptance of RFA.
Max. 90 days
Yes
Does the appeal have merit?
No
Division engineer remands decision to district engineer, with specific instructions, for reconsideration; appeal process completed.
District engineer's decision is upheld; appeal process completed.

Appendix A

Applicant Options with Proffered Individual Permit



Appendix B

[FR Doc. 99–5734 Filed 38–99; 8:45 am]
BILLING CODE 3710–92–C

federal register

Tuesday
March 9, 1999

Part V

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Parts 571 and 575

Consumer Information Regulations: Utility Vehicle Label; Final Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 575

[Docket No. NHTSA–98–3381, Notice 2]

RIN 2127–AG53

Consumer Information Regulations; Utility Vehicle Label

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule modifies the rollover warning currently required for small and mid-sized utility vehicles. Utility vehicles, which have features for off-road use, are often referred to in the media as sport utility vehicles. In place of the current, text-only warning label containing a paragraph of information, this rule requires a new label that uses graphics, bright colors, and short bulleted text messages. This rule also requires that additional information related to rollover risks be included in the owners' manuals of these vehicles. These changes make the rollover warning more attention-getting and understandable to consumers. They will thereby increase the chance that the warning will persuade drivers to modify their behavior and reduce the likelihood of rollovers.

DATES: This final rule is effective September 1, 1999. Petitions for reconsideration must be received by April 23, 1999.

ADDRESSES: Petitions for reconsideration should refer to the docket and notice number of this final rule and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590:

For labeling issues: Mary Versailles, Office of Planning and Consumer Programs, NPS–31, telephone (202) 366–2057, facsimile (202) 366–4329.

For general rollover issues: Gayle Dalrymple, Office of Crash Avoidance Standards, NPS–20, telephone (202) 366–5559, facsimile (202) 366–4329.

For legal issues: Nicole Fradette, Office of Chief Counsel, NCC–20, telephone (202) 366–2992, facsimile (202) 366–3820.

SUPPLEMENTARY INFORMATION:

I. Summary of Today's Rule

In an effort to reduce the rollover rate of utility vehicles [1], today's rule modifies the existing requirements for rollover warning labels for those vehicles. The new labels will more effectively alert their drivers to the risk the vehicles will roll over, the steps they can take to avoid that risk, and the steps they can take to reduce the chance of injury in the event of a rollover. The new label uses bright colors, graphics, and short bulleted text messages in lieu of the current text-only format. The rule requires the label's header to have an alert symbol (a triangle containing an exclamation point) followed by the statement ''WARNING: Higher Rollover Risk'' in black text on a yellow background. The following three statements must appear below the header in the center of the label: ''Avoid Abrupt Maneuvers and Excessive Speed,'' ''Always Buckle Up,'' and ''See Owner's Manual For Further Information.'' The rule specifies that the label must contain two pictograms: one showing a tilting utility vehicle on the left of the label, and the other showing a seated vehicle occupant with a secured three-point belt system on the right. The pictograms and the statement must be in black on a white background. The rule requires the label to be placed on either the driver's sun visor or the driver's side window. If the label is placed on the back of the driver's sun visor, the rule requires an alert label to be placed on the front of the visor urging the person to flip the visor over and read the information on the other side. The new label is required on utility vehicles with a wheelbase of 110 inches or less. The rule also requires additional information on rollover be included in the owner's manuals of these vehicles. The new requirements are effective September 1, 1999.

II. Background

A. The Rollover Crash Problem [2]

The agency has focused its rollover consumer information efforts on utility vehicles because this type of vehicle is involved in rollover-related occupant deaths more often (on a per-vehicle basis) than other vehicle types. Utility vehicles experience 98 rollover fatalities for every million vehicles registered.[3] This is more than twice the rate of all other light vehicle types combined—44 deaths per million registered vehicles (although small pickup trucks have a similar fatal rollover rate—93 deaths per million registered vehicles).[4]

This does not mean, however, that utility vehicles are unsafe overall compared to other vehicle types. The *overall* fatality rate (for crashes of all types, i.e., front, rear, side and rollover crashes) for utility vehicles is 163 fatalities per million registered vehicles, compared to 169 for all light duty vehicles combined. Small pickup trucks have the highest overall fatality rate, at 217 fatalities per million registered vehicles, followed by small cars, at 200.

B. Existing Utility Vehicle Rollover Warning Label

Currently, utility vehicles are required to have a label advising drivers that the handling and maneuvering characteristics of these vehicles require special driving practices (49 CFR 575.105). The label must be permanently affixed in a location in the vehicle which is ''prominent and visible to the driver.'' A common location used by manufacturers is the sun visor. No minimum size requirements are specified for the label or lettering. The label must be ''printed in a typeface and color which are clear and conspicuous.'' The label must include the following or similar language:

> This is a multipurpose passenger vehicle which will handle and maneuver differently from an ordinary passenger car, in driving conditions which may occur on streets and highways and off road. As with other vehicles of this type, if you make sharp turns or abrupt maneuvers, the vehicle may roll over or may go out of control and crash. You should read driving guidelines and instructions in the Owner's Manual, and WEAR YOUR SEAT BELTS AT ALL TIMES.

Utility vehicles are also required to have information in the vehicle owner's

[1] ''Utility vehicles'' are defined in 49 CFR Part 575 as multipurpose passenger vehicles (other than those which are passenger car derivatives) with a wheelbase of 110 inches or less and with special features for off-road operation. 49 CFR Part 575.105. These vehicles are commonly referred to as sport utility vehicles in the media.

[2] A complete summary of the statistics used in this section can be found in the document titled ''Status Report for Rollover Prevention and Injury Mitigation, May 1996,'' in Docket 91–68–N05.

[3] Fatality rates given are averages of 1991–1994 rates, using fatality data from FARS and vehicle registration data from R.L. Polk and Company, which was limited to the 14 most recent model years at the time of the Status Report.

[4] According to a review of the National Automotive Sampling System (NASS), rollover crashes accounted for over 28 percent of all light duty vehicles fatalities in 1997. Light duty vehicles are passenger cars, pickup trucks, vans, and sport utility vehicles with a gross vehicle weight rating of 10,000 pounds or less. Vans and sport utility vehicles are both considered multipurpose passenger vehicles for purposes of NHTSA regulations. From 1991 through 1994, an average of 8,857 occupants of light duty vehicles died in rollover crashes annually. (1991–1994 average from Fatality Analysis Reporting System (FARS)) These fatal rollover crashes occurred with all types of vehicles; the greatest number occurred in small passenger cars, followed by small pickup trucks.

manual. The current requirement specifies the following or similar language:

Utility vehicles have higher ground clearance and a narrower track to make them capable of performing in a wide variety of off-road applications. Specific design characteristics give them a higher center of gravity than ordinary cars. An advantage of the higher ground clearance is a better view of the road allowing you to anticipate problems. They are not designed for cornering at the same speeds as conventional 2-wheel drive vehicles any more than low-slung sports cars are designed to perform satisfactorily under off-road conditions. If at all possible, avoid sharp turns or abrupt maneuvers. As with other vehicles of this type, failure to operate this vehicle correctly may result in loss of control or vehicle rollover.

C. Summary of NPRM

On April 13, 1998, the agency published an NPRM proposing to modify this labeling requirement. The proposed changes were based on the results of a series of focus groups conducted in June 1996 as well as the agency's experience in the rulemaking to improve the air bag warning labels.[5] The proposed changes included use of bright colors, graphics, and short bulleted text messages, instead of the current text-only format. The rollover focus groups and other focus groups formed by the agency have consistently concluded that labels like the existing utility vehicle label (long unbroken passages of text and no graphics) are less likely to be read than labels with minimal wording and graphics.

NHTSA explained in the NPRM that the American National Standard Institute (ANSI) has a standard[6] for product safety signs and labels (ANSI Z535.4) that identifies a hierarchy of hazard levels ranging from extremely serious to moderately serious and specifies corresponding hierarchies of signal words, i.e., ''danger,'' ''warning,'' and ''caution,'' and of colors. For the header, the ANSI standard specifies a red background with white text for ''danger,'' an orange background with black text for ''warning,'' and a yellow background with black text for ''caution.''

ANSI REQUIREMENTS FOR COLOR CODED HEADER MESSAGES FOR THE DIFFERENT LEVELS OF HAZARD

[Listed in declining level of hazard]

Imminently hazardous situation which will result in death or serious injury if not avoided.	''Danger''	Red background with white text.
Potentially hazardous situation which could result in death or serious injury	''Warning''	Orange background with black text.
Potentially hazardous situation which could result in minor or moderate injury	''Caution''	Yellow background with black text.

The ANSI standard specifies that pictograms should be black on white, with occasional uses of color for emphasis, and that message text should be black on white.

The NPRM proposed three different labels for comment. Proposed label 1 used the ANSI color format with the heading background in orange with the words in black. The remainder of the label had a white background with black text and drawings. Proposed label 2 used a color scheme like the air bag warning labels, which is the same as the ANSI color format except that the background color for the heading in the label is yellow. Proposed label 3 employed the color scheme used in the focus groups—the heading area had a red background with white text. The graphic areas had a yellow background with black and white drawings. The text area had a black background with yellow text.

Proposed label 1 used two graphics to the left of the areas with heading and text. Proposed labels 2 and 3 had a heading area across the top of the label, with two graphics surrounding a text area below. All three proposed labels had a graphic of the area on a seat belt where the buckle is, with the belt not fully buckled. Proposed labels 1 and 2 had a graphic with a vehicle on a curved road that was tipping. Proposed label 3 had a graphic of a tipped vehicle with a curved arrow under it and a person being ejected from the vehicle.

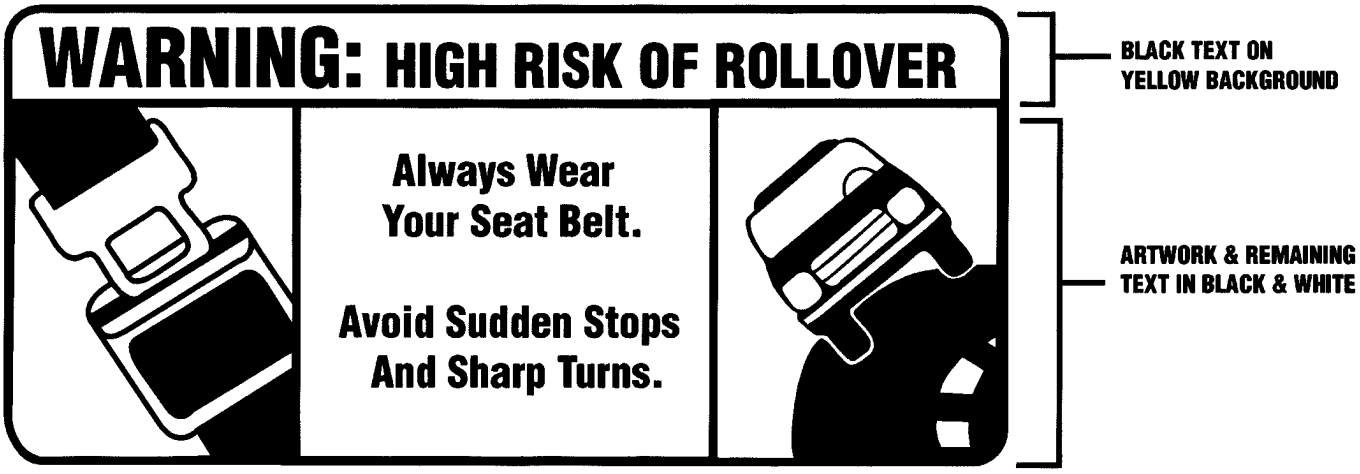
Despite focus group preference for the signal word ''danger,'' the agency proposed the use of the word ''warning'' as more appropriate to the level of risk. The agency also noted that the word ''warning'' is used in the air bag warning label. NHTSA sought comment on whether to use the phrases ''High Risk of Rollover'' or ''Higher Rollover Risk'' in the label. Proposed labels 1 and 2 used the phrase ''High Risk of Rollover'' in the text and heading areas respectively. Proposed label 3 used the phrase ''Higher Rollover Risk.'' Proposed label 3 also used the phrase ''Always Buckle Up.'' Proposed labels 1 and 2 included the phrase ''Avoid Sudden Stops and Sharp Turns.''

BILLING CODE 4910–59–P

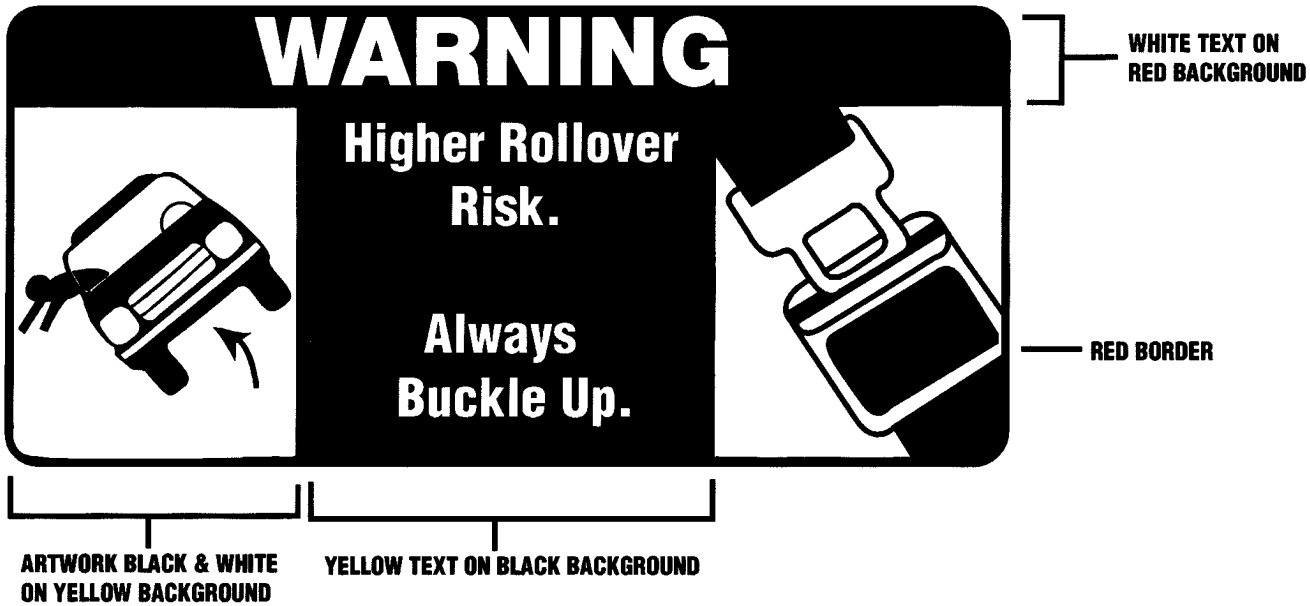
[5] Copies of the Focus Group Report, dated August 1996, as well as the three potential labels proposed in the NPRM are in docket NHTSA 98–3381.

[6] This standard was not considered by the June 1996 rollover focus groups in their deliberations, however the standard was considered in a series of air bag label focus groups in October 1996.

PROPOSED
LABEL 1



PROPOSED
LABEL 2



PROPOSED

LABEL 3

BILLING CODE 4910–59–C

Prior to publication of the NPRM, NHTSA had received a petition for reconsideration from the American Automobile Manufacturers Association (AAMA) of a provision in the air bag warning label requirements that prohibits the utility vehicle rollover warning label and the air bag label from being on the same side of the sun visor. Currently, the utility vehicle rollover warning label must be permanently affixed to the instrument panel, windshield frame, driver's side sun visor, or some other location on the vehicle interior visible from the driver's position. Under current requirements, if the utility vehicle rollover warning label is placed on the sun visor, it must be on the front side. Thus, a manufacturer which chooses this popular location must place the air bag warning label on the back side of the sun visor with the air bag alert label on the front. In the April 1998 NPRM, NHTSA sought comments on whether it should: (1) retain the current location requirements; (2) retain the current utility vehicle warning label location requirements and remove the prohibition from the air bag warning label location requirements; or (3) amend the utility vehicle rollover warning label requirements to prohibit its placement on the driver's side sun visor. As part of the last possibility, NHTSA sought comment on an additional possible location, i.e., the lower, rear corner of the driver's side door window visible from the vehicle exterior. NHTSA also sought comment on whether a size should be specified for the label.

NHTSA also asked for comments on possible changes to the owner's manual requirement. NHTSA proposed three possible approaches to an owner's manual information requirement: (1) retain the current owner's manual information requirement, (2) specify that information on design features which may make a vehicle more likely to rollover (e.g., higher center of gravity) and driving practices which can reduce the risk that a rollover will occur (e.g., avoiding sharp turns) or which can reduce the likelihood of death or serious injury if a rollover occurs (e.g., wearing seat belts) be included in the owner's manual without specifying the exact content of such information, or (3) specify the inclusion of information beyond what is now specified. The agency explained that this additional information could include: statistical information comparing the rollover risk of utility vehicles with other light passenger vehicles, statistical information demonstrating the lower risk of fatality or injury if seat belts are worn, information on the types of situations that can result in a rollover, and information on how to properly recover from a driving scenario that could result in rollover.

On May 15, 1997, American Suzuki Motor Corporation (Suzuki) petitioned NHTSA to modify the existing utility vehicle label to include additional language on the circumstances which may lead to rollovers and the specific actions a driver can take to reduce the risk of rollovers in those circumstances.[7] Suzuki also asked the agency to amend the requirement to require the label in all light trucks, not just utility vehicles. The agency explained that it considered the Suzuki petition moot, since the requested actions were under consideration in several open rulemakings, including this rulemaking, regarding consumer information on rollover prevention, and in other agency consumer information activities and sought comment on whether to extend the utility vehicle label requirement to all light trucks (trucks, buses, and MPVs) or to any subset of this category (e.g., all utility vehicles). The agency proposed a lead time of 180 days between the final rule and its implementation.

III. Summary of the Comments

NHTSA received 19 comments on the NPRM from six manufacturers, two consumer interest groups, three trade associations, six business students, and two other organizations.

[7] Suzuki suggested the following language in its petition:

If, for any reason, your vehicle slides sideways or spins out of control at highway speeds, the risk of rollover is greatly increased. This condition can be created when two or more wheels drop off onto the shoulder and the driver steers sharply in an attempt to reenter the roadway. To reduce the risk of rollover in these circumstances, if conditions permit, hold the steering wheel firmly and slow down before pulling back into the travel lanes with controlled steering movements.

A. Revision and Upgrade of the Label

Only one commenter, Exponent Failure Analysis, explicitly opposed the new label, based on a belief that it could lead consumers to purchase vehicles that are overall less safe.[8] Advocates for Highway and Auto Safety (Advocates) reiterated its long-standing belief that a rollover standard is needed and expressed skepticism about whether a new label can reduce rollovers. Consumers Union also stated that additional activities are needed to reduce rollovers. Mercedes-Benz, who currently does not produce any vehicles that are subject to the requirement, believes that the current label should be sufficient to inform its customers of the special driving characteristics of utility vehicles.[9] Honda Motor Corporation (Honda) agreed that the new label might be more effective, but stated that NHTSA should set performance requirements for labels instead of mandating specific designs. Honda did not, however, suggest any method that could be used to measure performance for a label. All other commenters either did not object to changing the label or explicitly supported the change.

Most of the commenters who expressed a particular preference for one of the proposed labels supported label number 2, citing as bases for their support both the color scheme and layout. With respect to the color of the label's header, commenters expressed strong support for a yellow background. The Association of International Automobile Manufacturers (AIAM) and AAMA stated that NHTSA should allow the choice of yellow or orange.

Except for Consumers Union which supports any message encouraging belt use, most commenters objected to the graphic depicting the rider being thrown from the vehicle. They believed this graphic shifted emphasis away from rollover prevention to belt use. Commenters also objected to graphics showing a curved road as implying that rollovers only occur on curves. AIAM disliked the arrow in the graphic without a road because it believed it was redundant of the depicted vehicle attitude. AIAM, AAMA, and Honda all preferred the standard belt use graphic, the three-point seat belt symbol (see 49 CFR 571.101), to the graphic used on the proposed labels. Honda also suggested retesting the graphics using ANSI's protocol for safety symbols (ANSI Z535.3–1991, *Criteria for Safety Symbols).*

Overall, commenters expressed strong support for the word ''warning.'' Only one comment supported using the word ''danger'' for the warning label. Three business students, Felix Bonet, Jeana Jewett and Yuladys Sanchez, submitted a survey they conducted in which 70 percent of respondents said that the word ''danger'' would attract attention more. AAMA stated that either ''Warning'' or ''Caution'' should be allowed since there is no evidence that consumers would react differently to the two words. Some of the commenters preferred label 2 because the reason for the warning (rollover) was stated on the same line as the word ''warning.'' Finally, AAMA, AIAM, and Honda asked that the use of the safety alert symbol (triangle with an exclamation point) be allowed on the label.

None of the commenters expressed explicit support for or opposition to using either the phrase ''High Rollover Risk'' or the phrase ''Higher Risk of Rollover.'' Instead, commenters suggested other alternative statements such as: ''Reduce Rollover Risk,'' ''To Avoid Rollovers . . .,'' and ''This vehicle handles differently than a car.''

Those commenters who addressed the issue of what seat belt phrase to use preferred the phrase ''Always Buckle Up,'' which was used on proposed label 3. Honda stated that any belt use message should be secondary since there are already numerous belt use messages. With respect to the phrase ''Avoid Sudden Stops and Sharp Turns,'' which was included on proposed labels 1 and 2, commenters stated that they disliked both maneuver statements because these maneuvers are often used to avoid crashes. The commenters suggested adding a statement regarding speed and alcohol use since these are common factors in rollover crashes. Commenters also suggested adding a statement to the label to see the owner's manual and allowing foreign language translations of the label.

B. Location and Size of the Label in the Vehicle

With respect to the label's location, only one commenter, the Insurance Institute for Highway (IIHS), stated that NHTSA should prohibit the utility vehicle label from being placed on the sun visor. IIHS believed that the utility label's presence on the sun visor would diminish the effect of the air bag label. IIHS, along with Consumers Union, preferred the location of the driver's side window. Advocates stated that it did not have a strong position on the location of the label, except that it believed that safety labels (including air bag labels) should be visible at all times and should not be located on the back of the sun visor. Many commenters believe the agency should allow flexibility on the label's location, including allowing both the air bag label and the utility vehicle label to be on the same side of the sun visor.

In general, commenters supported giving manufacturers flexibility on the size of the label. One commenter suggested specifying a specific minimum font size so that manufacturers would not be tempted to make the labels too small. Other commenters opposed specifying a minimum size and supported maintaining the current ''prominent and visible to the driver'' language.

C. Inclusion of New Rollover Statement in the Owner's Manual

AIAM believes that NHTSA should specify the exact wording of the discussion in the owner's manual, but that it should not be the currently required discussion. Several of the commenters stated that the current requirement should be changed. Advocates stated that statistical information should not be required because it can change from year to year. Finally, several commenters expressed support for option two (specifying topics to cover but not exact language) because it provides manufacturers with more flexibility.

D. Vehicle Applicability and Effective Date

In the April 1998 NPRM, NHTSA asked for comments on extending the utility vehicle rollover requirement to all light trucks (trucks, buses, and MPVs) or to any subset of this category (such as all utility vehicles). The commenters were split on whether NHTSA should extend this requirement to other vehicles. Some commenters stated that this should be the subject of a separate rulemaking, while others said that the agency should wait to determine the effectiveness of a new label before extending the requirement to other vehicles. There were no comments on extending the labeling requirement to all utility vehicles.

With regard to the issue of leadtime, all commenters said 180 days was adequate for label changes. However, commenters said that they would need at least one year if changes were made to the owner's manual, as these manuals are often ordered at one time for the entire model year.

E. Additional Issues

In its comments on the NPRM, AAMA asked NHTSA to write the rule so that

[8] NHTSA notes that the rationale given for this opposition applies equally to the current label.

[9] NHTSA notes that any voluntary label would not have to comply with the Federal requirement.

individual manufacturers could change the language and graphics on the label upon seeking and receiving the Administrator's permission to allow for changes in technology without the need for rulemaking.

IV. Agency's Decision and Response to Comments

A. Revision and Upgrade of the Label

NHTSA has decided to amend the existing utility vehicle rollover warning labeling requirement. The agency believes the modifications made by this final rule will make the information more noticeable and understandable to consumers and, therefore, increase the chance that the labels can affect driver behavior to reduce rollovers and thus reduce fatalities and injuries. NHTSA has decided to use the format in label 2 with two graphics surrounding the label's text and a heading above. The rule requires the graphic depicting the use of a seat belt to be on the right and the rollover graphic to be on the left.

The agency has decided to use the color yellow in the header. The agency recognizes that the use of the color yellow is inconsistent with the ANSI standard, which specifies the use of orange for headers relating to potentially hazardous situations, such as the ones addressed by this final rule, which could result in death or serious injury. However, the use of yellow is consistent with the color chosen by the agency for the header of the air bag label. NHTSA specified the use of yellow for air bag warning labels because of an overwhelming focus group preference for that color and the meaning associated with that color (focus groups associated the word ''caution'' with yellow and associated no meaning with the word orange).[10] The agency believes that the use of orange for rollover warning labels and yellow for air bar warning labels could create confusion. In addition, commenters expressed strong support for the color yellow. The rule does not allow the use of orange in the header. This prohibition is consistent with the air bag warning label.

The agency agrees with the comments of AIAM, AAMA, and Honda and has decided to adopt the standard belt use graphic, the three-point seat belt symbol (see 49 CFR 571.101), instead of the buckle graphic used on the three proposed labels. NHTSA believes that consistency in graphics will prevent any confusion about the meaning of a particular pictogram. NHTSA understands the commenters' belief that a curved road in the vehicle graphic might lead consumers to believe that rollovers can only occur on a curved road and should be removed. In addition, the agency agrees that the arrow underneath the tilting vehicle clutters the graphic and should also be removed. The agency believes, however, that some frame of reference is needed so that people will not be confused and conclude either that the graphic was misprinted on the label or that the label was placed on the vehicle crooked. NHTSA has, therefore, decided to change the vehicle graphic to show a tilting vehicle on a horizontal plane.

In response to Honda's comment and to determine which graphics would be most effective, NHTSA conducted additional consumer testing of the recommended graphics in accordance with the ANSI protocol for evaluating symbol comprehension. Focus group testing was done on the tilting vehicle graphic and on the two alternate seat belt graphics (the graphic used in Standard No. 101, *Controls and displays*, and a graphic like the one used in the NPRM except depicting a 3-point belt instead of a lap belt). In addition, to test the overall comprehension of the graphics, NHTSA tested the label with all text deleted except the word ''warning''.

Participants were shown the three graphics (the tilting vehicle graphic and the two seat belt graphics), asked to identify what the graphic meant or was trying to tell them, and asked to choose from four possible responses. Of the four responses provided, one was correct, two were incorrect, and one indicated ''critical confusion.''[11] With respect to the two seat belt graphics, 95 percent of the participants chose the correct response for the seat belt graphic used in Standard No. 101, *Controls and displays*, 1 percent chose the incorrect response and 4 percent chose the critical confusion response. For the 3-point seat belt graphic, 86 percent chose the correct response, 5 percent chose incorrectly and 7 percent chose the critical confusion response. With respect to the tilting vehicle graphic, 81 percent of the participants chose the correct response, 18 percent chose the incorrect response and 1 percent chose the critical confusion response. Participants were also shown the new label with all text deleted except the word ''warning'' and asked to identify what the label as a whole meant or was trying to tell them. Ninety-four percent of the participants chose the correct meaning of the label (5 percent chose the incorrect meaning and 1 percent chose the critical confusion response). NHTSA believes the addition of the seat belt graphic along with the word ''warning'' provided a context for the tilting vehicle graphic so that participants understood the overall meaning of the label.

NHTSA believes that these results demonstrate that the label is readily understandable to the vast majority of people. The ANSI standard calls for at least 85 percent of correct responses and not more than 5 percent critical confusion. The seat belt graphic used in Standard No. 101, *Controls and displays*, (with 95 percent of the responses correct and only 1 percent critical confusion) is well within the requirements of ANSI's standard. While the tilting vehicle graphic did not receive a correct response of 85 percent when it was viewed in isolation, the ANSI standard indicates that a label's graphic judged unacceptable when so viewed may nevertheless become acceptable if explanatory text is added. The new rollover label has such explanatory text. In addition, the tilting vehicle graphic had a critical confusion response of only 1 percent. Further, the overall recognition level of the label as a whole was high, with 94 percent of the participants correctly identifying the meaning of the label.

The agency does not have any evidence that any of the suggested signal words, i.e., ''danger'', ''warning'' or ''caution,'' would be more effective than the others. It also does not have any information showing that ''danger'' would be more appropriate than ''warning'' for labels regarding the particular hazard addressed by this rulemaking. The agency, therefore, sees no reason to depart from the voluntary industry standard and has decided to use the word ''warning'' to comply with the ANSI standard. The final rule also mandates the use of the safety alert symbol. Manufacturers asked that the use of the alert symbol be permitted instead of required. The agency believes that this requirement will make the label more attention getting and will, therefore, increase the effectiveness of the label. In addition, requiring the safety alert symbol will also make the label's appearance uniform with that of the air bag label.

With respect to the use of the phrases ''Higher Rollover Risk'' and ''High Risk of Rollover,'' NHTSA believes that the alternatives suggested by the

[10] Only two of the 53 focus group participants preferred orange. Participants generally stated that yellow was more eye-catching than orange. Participants also noted that red (stop) and yellow (caution) had meaning to them, but not orange.

[11] ''Critical confusion'' is the term used to describe the situation in which a participant concludes that the meaning of the graphic is the opposite of the meaning intended by the graphic's designer.

commenters, ''Reduce Rollover Risk * * *'' and ''To Avoid Rollovers * * *'', are less appropriate. While the proposed phrases invite the reader to respond by taking both crash avoidance measures (i.e., more careful driving) and injury reduction measures (i.e., seat belt use), the alternative phrases invite crash avoidance measures only. Further, the agency believes the phrase ''This vehicle handles differently than a car'' is too wordy. One of the reasons the agency is modifying the label is because the current one is too wordy. NHTSA also notes that focus groups emphasized that statements should be short.

NHTSA is aware that the rollover risk is not ''high'' in absolute terms, but it is higher for SUVs than other vehicle types. Consequently, the final rule requires the label to include the phrase ''Higher Rollover Risk.'' In addition, the rule requires that this phrase be placed on the first line of the label following the signal word ''Warning.'' NHTSA believes that the placement of this phrase at the top of the label is important to highlight the purpose of the label and to help alert the driver to the importance of heeding its warnings.

NHTSA chose to delete the ''sudden stops'' statement from the label since both the focus group and the commenters expressed concern that these maneuvers are often used to avoid crashes. The final rule requires the statement: AVOID ABRUPT MANEUVERS AND EXCESSIVE SPEED. NHTSA believes that this statement makes the driver aware of particular practices that should be avoided. The final rule also requires the use of the phrase ''Always Buckle Up'', which was preferred by commenters, and specifies that it be placed as the second statement on the label. The agency believes that this message is easily understood and effectively conveys the importance of wearing a seat belt. The agency has decided not to adopt an alcohol use statement as suggested by the commenters as it believes this issue is better addressed in other ways.

NHTSA agrees with the commenters that the label should include a statement urging the driver to look in the vehicle owner's manual for further information. NHTSA recognizes that it did not adopt a similar statement proposed for the air bag warning labels. It did not do so because some members of the air bag focus groups expressly objected to it, and indicated they wanted the label itself to tell them what they need to know about air bag dangers and how to avoid them. The agency believes that it is harder, within the practical limitations imposed by a relatively small warning label, to provide the basic information necessary for avoiding rollover dangers than it is to provide information necessary for avoiding air bag dangers. These limitations make it necessary to place much of the basic information about rollover dangers in the owner's manual. The owner's manual will include a discussion of the vehicle design features which cause this type of vehicle to be more likely to rollover (e.g., higher center of gravity), a discussion of the driving practices that can reduce the risk of a rollover (e.g., avoiding sharp turns at excessive speed), and an explanation of why it is important to wear a seat belt (i.e., that unbelted occupants are significantly more likely to die in a rollover crash than belted occupants). The agency believes that it is both important and appropriate to have a statement on the label reminding the driver to read the information in the owner's manual and is requiring that it be included.

B. Location and Size of the Label in the Vehicle

NHTSA conducted a literature search for information on warning placement to assist the agency in determining the most appropriate location for the label. The agency found a number of sources of guidance. ANSI Z535.4 (1991) permits multiple hazard warnings in the same location if more than one hazard exists for a product and either the sources of the hazards are in close proximity to each other or the hazards are preventable from a common location. However, the standard recommends that individual messages have sufficient space around them to prevent them from visually blending together. The Westinghouse Electric Corporation (1981) guidelines recommend against placing multiple hazard warnings in the same location. In cases in which multiple warnings are provided, the guidelines prohibit placing warnings concerning hazards with different levels of seriousness in close proximity to each other. Further, according to a study done for the Consumer Product Safety Commission, label recognition decreases as the number of labels increases. This was a limited study (10 subjects for each condition) done on all terrain vehicles (ATV) warnings. It tested label recognition when there were different numbers (4, 7, 9, or 11) of warning labels present.

In response to comments and in light of the results of its literature review, the agency is allowing the utility vehicle label to be placed on either (1) the driver's sun visor (either side) or (2) the driver's side window. The agency believes that this will allow manufacturers two alternatives if it is not possible to place both the air bag label and the utility vehicle label on the same side of the sun visor. Allowing manufacturers to put the utility vehicle label on either side of the sun visor, they could choose to put the air bag label on the front, increasing its prominence, if it is not possible to put both labels on the front. Based on the research, allowing both labels on the sun visor should not result in information overload because: (1) There are only 2 hazards being warned about; (2) actions that would avoid both rollover and air bag hazards can be avoided from the driver's seating position; and (3) both hazards have the same degree of seriousness.

However, to maintain the separateness of the labels and their messages, the agency is specifying that the labels cannot be contiguous. Further, to keep the pictograms of the two labels from running together visually, the final rule also specifies that the air bag warning label must be to the left of the utility vehicle rollover warning label when both labels are placed on the same side of the sun visor. Since the pictogram on the air bag warning label is on its left side, placing that label to the left of the rollover warning label puts that pictogram far from the pictograms on the rollover warning label. Finally, the final rule requires that a rollover alert label, similar to the air bag alert label, must be placed on the front of the sun visor if the utility vehicle label is put on the back of the sun visor.

With respect to specifying a particular size for the label, NHTSA believes that concerns over liability make it unlikely that manufacturers would make the label, or its contents, too small. Further, despite the absence of any current requirement about label size, no commenter gave an example of a rollover warning label that the commenter regarded as too small. As to lettering size, NHTSA believes that specifying a minimum font size is unnecessary at this time. NHTSA has not required any particular font face or size for the air bag warning label. Manufacturers, particularly those which choose to place both the air bag warning label and the rollover warning label on the same side of the sunvisor, may wish to use the same font face and size in both labels. Today's rule allows them the flexibility to do so. NHTSA, therefore, decided not to specify either a particular font face or font size for the rollover label. As the label size has not been a problem in the past, the final rule retains the current requirement that the

label be ''legible, visible and prominent'' to the driver. If the agency becomes aware of cases in which the size of the label or label's text is too small, we will revise the rule to specify label and font size.

C. Inclusion of New Rollover Statement in the Owner's Manual

Today's rule requires owner's manuals to include the following statements and information:

(1) The statement ''Utility vehicles have a significantly higher rollover rate than other types of vehicles.''

(2) A discussion of the vehicle design features which cause this type of vehicles to be more likely to rollover (e.g., higher center of gravity);

(3) A discussion of the driving practices that can reduce the risk of a rollover (e.g., avoiding sharp turns at excessive speed); and

(4) The statement: ''In a rollover crash, an unbelted person is significantly more likely to die than a person wearing a seat belt.''

The agency believes that the general nature of the requirements about discussions of design features and driving practices will allow manufacturers to tailor language to their specific vehicles. At the same time, the requirements are specific enough to ensure that critical topics are included. NHTSA believes that uniformity in the two required statements is important in order to underscore the message contained on the label. The agency believes that uniformity is not needed with respect to the discussion of vehicle design features which make these vehicles more prone to rollover or the driving practices that can reduce the risk of rollover. The agency believes that manufacturers are in a better position to advise drivers as to which particular features of their vehicles are most relevant.

D. Vehicle Applicability and Effective Date

In light of the lack of comments on the issue of extending the requirement to all utility vehicles, NHTSA analyzed the statistics for percent rollovers per single vehicle crashes (%RO/SVC) for vehicles with a wheelbase of ≤110 inches compared to the %RO/SVC for vehicles with a wheelbase of >110 inches to determine the rollover rate for different vehicle types. The rollover rate for utility vehicles with a wheelbase of ≤110 inches was 57.5 percent, the highest of all the types. The rollover rate was 9.5 percent for utility vehicles with a wheelbase of >110 inches and 48.9 percent for all utility vehicles.[12] Small pickup trucks (those with a wheelbase of ≤110 inches) had the next highest rollover rate, with 41.4 percent. The results are summarized in Table 1.

In light of these numbers, NHTSA has decided not to extend the requirement to other vehicles at this time. The vehicles with the highest rollover rate are already required to have a rollover warning label. Therefore, the costs associated with the new labeling requirement should be minimal.

The agency notes that it is undertaking a research program to examine various measurements to determine susceptibility to rollover on an individual vehicle basis instead of on a vehicle type basis. Depending on the results of this research, NHTSA may revisit the issue of what vehicles should be required to have a rollover warning label.

TABLE 1.—PERCENT ROLLOVER PER SINGLE VEHICLE CRASHES (% RO/SVC)

	All	≤110″ wheelbase	>110″ wheelbase
Car	17.4	20.1	11.0
Utility Vehicle	48.9	57.5	9.5
Van	22.2	[1] 8.3	30.4
Pickup	37.5	41.4	25.6

[1] This number may not be reliable. It reflects a very small number of vans with wheelbases ≤110 inches. This is because the most popular minivans have wheelbases longer than 110 inches.

The new label and owner's manual requirements contain important information that more effectively alerts drivers to the risk the vehicles will roll over, the steps to take to avoid that risk, and the steps to take to reduce the chance of injury in the event of a rollover. NHTSA, therefore, believes that a September 1, 1999 effective date for the label and owner's manual requirements is appropriate. NHTSA believes that manufacturers will have sufficient leadtime to design new labels and revise owner's manuals to include the information required by today's rule. With respect to the labeling requirement, all of the commenters agreed that a leadtime of 180 days was sufficient to design, produce and install a new label. In addition, the new label directs the driver to consult the owner's manual for further information, as the agency believes that drivers and passengers should be aware of the information contained in the owner's manual. Although commenters said that they would need at least one year to make any changes to the owner's manual as these manuals are often ordered at one time for the entire model year, the agency believes that any changes can be made within 180 days. Manufacturers generally order owner's manuals three to four months (in June or July) before the start of the new model year of production. NHTSA believes that a September 1, 1999, effective date will provide manufacturers with sufficient lead time to make all the changes required by today's rule prior to publication of the new owner's manuals. Further, the agency notes that if for any reason a manufacturer is unable to make the changes before the new manual is published, the manufacturer may place an insert with the required information in the owner's manual.

E. Additional Issues

Today's rule does not permit manufacturers to make changes to the label upon seeking and receiving special permission from the Administrator. NHTSA believes it is important that people see the same message in all utility vehicles subject to this final rule. The agency believes that inconsistency in the content of the label could cause confusion and undermine the

[12] Utility vehicles with a wheelbase ≤110 inches had a rollover rate of only 9.5 percent. These statistics were generated from 1997 National Automotive Sampling System data.

effectiveness of the label's safety message.

V. Policy on Use of Standards vs. Focus Groups

In the NPRM, NHTSA also raised the issue of the circumstances in which it is appropriate in its rulemaking not to follow standards established by voluntary consensus standards organizations. The agency explained that under the National Technology Transfer and Advancement Act of 1995 (NTTAA), Federal agencies must consider and adopt the use of ''voluntary consensus standards'' to implement their ''policy objectives or activities,'' unless doing so would be ''inconsistent with applicable law or otherwise impractical.'' A ''voluntary consensus standard'' is defined as a technical standard developed or adopted by a legitimate standards-developing organization (''voluntary consensus standards body''). According to NTTAA's legislative history, a ''technical standard'' pertains to ''products and processes, such as the size, strength, or technical performance of a product, process or material.'' Further, a voluntary consensus standards organization under the NTTAA is one that produces standards by consensus and observes the principles of due process, openness, and balance of interests.

Consistent with the NTTAA, NHTSA requested comments on the extent to which any final choice regarding colors and signal words should be guided by the focus group preferences instead of the ANSI standard. NHTSA also requested comments on the broader issue of the circumstances in which it would be appropriate for agency rulemaking decisions to be guided by focus group results or other information when such information is contrary to a voluntary consensus standard such as the ANSI standard.

The agency received little comment on this issue. In general, both manufacturers and consumer groups stated that while NHTSA should seek and consider input from focus groups and voluntary standards, the agency should rely on its own expertise and judgment when making any regulatory or policy decisions. Advocates and Honda were concerned that focus groups preferences were unscientific and unreliable and therefore, did not believe too much emphasis should be placed upon them.

NHTSA recognizes that the ANSI's mission in developing and issuing its standard for communicating information about a comprehensive hierarchy of hazards differs somewhat from that of the agency's focus groups in designing an effective label for a specific hazard and that their conclusions about the manner of communication may therefore differ. Given that agency labeling decisions are highly dependent on the facts regarding the specific hazard being addressed, the agency will make case-by-case determinations of the extent to which NHTSA should follow voluntary standards versus information from focus groups and other sources. As it has in this rulemaking, NHTSA will rely on its own expertise and judgement in making its determinations under the NTTAA and the statutory provisions regarding vehicle safety standards.

VI. Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866. Further, this action has been determined to be not ''significant'' under the Department of Transportation's regulatory policies and procedures.

NHTSA believes that this rule will result in a minimal cost to manufacturers and consumers of utility vehicles with a wheel base of less than 110 inches since this rule only changes the format of an existing label and involves a minor modification of existing text in the owner's manual.

The consumer cost of the new modified rollover warning label with two pictograms, short bulleted text and bright colors is dependent upon the type of label used, the size of the label and the number of colors used. The agency did not specify a print font face or size requirement for the new label, but instead retained the current requirement that the label be ''legible, visible and prominent'' to the driver. Thus, the agency believes that manufacturer changes in label size will not add an incremental cost to the present label. However, the requirement for the new label to have black text on a yellow background and two black pictograms on a white background requires the use of three colors, and will add an incremental cost to the present requirement dependent upon the type of label used by the manufacturer. The agency estimates that incremental cost of the additional label colors could be as little as $0.01 and as much as $0.10 per label, dependent upon the type of label applied by the manufacturer.

Since new owner's manuals are printed for each production year, the agency believes minor changes to the manual text will not increase its cost.

Therefore, the total annual incremental cost of the new warning rollover labels is estimated to be between $15,000 to $200,000. These figures are based on the assumption that average number of utility vehicles with wheelbases less than 110 inches sold per year in the U.S. will continue to be between 1.5 and 2 million per year. Since these costs are so minimal, a separate regulatory evaluation has not been prepared.

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 (SBREFA) 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). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant

economic impact on a substantial number of small entities.

NHTSA has considered the impacts of this rule under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. As explained above, NHTSA believes this rule will have minimal economic impact.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. The OMB Clearance number for the utility vehicle label (49 CFR 575.105) is 2127–0049. NHTSA has considered the impact of the changes required by today's rule and determined that they will not have any affect on the total burden hours imposed on the public by 49 CFR 575.105.

National Environmental Policy Act

NHTSA has also analyzed this rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

Executive Order 12612 (Federalism)

NHTSA has analyzed this rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule will not have significant federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This rule will not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Executive Order 13045

Executive Order 13045 (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 NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we 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 us.

This rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866, and does not have a disproportionate effect on children.

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) directs us to use voluntary consensus standards in its regulatory activities unless doing 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, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

We reviewed all relevant American National Standards Institute (ANSI) standards as part of developing the labeling and information requirements that are the subject of this document. To the extent consistent with our authorizing legislation, we used the following voluntary consensus standard in developing the labeling and information requirements:

- American National Standard Institute (ANSI) standard for product safety signs and labels (ANSI Z535.4).

List of Subjects

49 CFR Part 571

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

49 CFR Part 575

Consumer protection, Labeling, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA amends chapter V of Title 49 of the Code of Federal Regulations as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. In § 571.208, in S4.5.1, revise the heading for paragraph (b) and revise paragraph (b)(3) to read as follows:

§ 571.208 Standard No. 208; Occupant crash protection.

* * * * *

S4.5.1 * * *

(b) *Sun visor air bag warning label.*

* * * * *

(3) Except for the information on an air bag maintenance label placed on the visor pursuant to S4.5.1(a) of this standard, or on a utility vehicle label placed on the visor pursuant to 49 CFR 575.105(d)(1), no other information shall appear on the same side of the sun visor to which the sun visor air bag warning label is affixed. Except for the information in an air bag alert label placed on the visor pursuant to S4.5.1(c) of this standard, no other information about air bags or the need to wear seat belts shall appear anywhere on the sun visor.

* * * * *

PART 575—CONSUMER INFORMATION REGULATIONS

3. The authority citation for part 575 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

4. Section 575.105 is revised to read as follows:

§ 575.105 Vehicle rollover.

(a) *Purpose and scope.* This section requires manufacturers of utility vehicles to alert the drivers of those vehicles that they have a higher possibility of rollover than other vehicle types and to advise them of steps that can be taken to reduce the possibility of rollover and/or to reduce the likelihood of injury in a rollover.

(b) *Application.* This section applies to utility vehicles.

(c) *Definitions.*

Utility vehicles means multipurpose passenger vehicles (other than those which are passenger car derivatives) which have a wheelbase of 110 inches or less and special features for occasional off-road operation.

(d) *Required information.* (1) *Rollover Warning Label.* (i) Except as provided in paragraph (d)(2) of this section, each

vehicle must have a label permanently affixed to either side of the sun visor, at the manufacturer's option, at the driver's seating position. The label must conform in content, form and sequence to the label shown in Figure 1 of this section, and must comply with the following requirements:

(A) The heading area must be yellow, with the text and the alert symbol in black.

(B) The message area must be white with black text.

(C) The pictograms must be black with a white background.

(D) The label must be appropriately sized so that it is legible, visible and prominent to the driver.

(ii) When the rollover warning label required by paragraph (d)(1)(i) of this section and the air bag warning label required by paragraph S4.5.1(b) of 49 CFR 571.208 are affixed to the same side of the driver side sun visor, the rollover warning label must be affixed to the right (as viewed from the driver's seat) of the air bag warning label and the labels may not be contiguous.

(2) *Alternate location for warning label.* As an alternative to affixing the warning label required by paragraph (d)(1)(i) of this section to the driver's sun visor, a manufacturer may permanently affix the label to the lower rear corner of the forwardmost driver's side window. The label must be legible, visible and prominent to a person next to the exterior of the driver's door.

(3) *Rollover Alert Label.* If the label required by paragraph (d)(1) of this section and affixed to the driver side sun visor is not visible when the sun visor is in the stowed position, an alert label must be permanently affixed to that visor so that the label is visible when the visor is in that position. The alert label must comply with the following requirements:

(i) The label must read:

ROLLOVER WARNING

Flip Visor Over

(ii) The label must be black with yellow text.

(iii) The label must be no less than 20 square cm.

(4) *Owner's Manual.* The owner's manual must include the following statements and discussions:

(i) The statement ''Utility vehicles have a significantly higher rollover rate than other types of vehicles.''

(ii) A discussion of the vehicle design features which cause this type of vehicles to be more likely to rollover (e.g., higher center of gravity);

(iii) A discussion of the driving practices that can reduce the risk of a rollover (e.g., avoiding sharp turns at excessive speed); and

(iv) The statement: ''In a rollover crash, an unbelted person is significantly more likely to die than a person wearing a seat belt.''

BILLING CODE 4910–59–P

Figure 1 to § 575.105

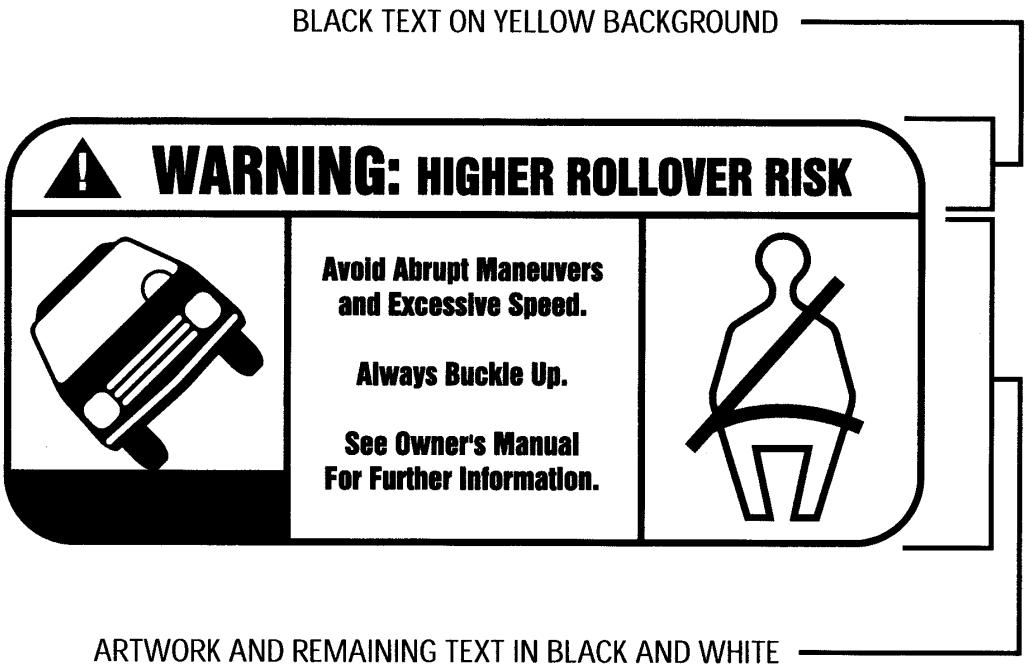


FIGURE 1

Issued: March 3, 1999.

Ricardo Martinez,

Administrator.

[FR Doc. 99–5735 Filed 3–5–99; 8:45 am]

BILLING CODE 4910–59–C

federal register

Tuesday
March 9, 1999

Part VI

Department of the Interior

National Park Service

36 CFR Part 61

Procedures for State, Tribal, and Local Government Historic Preservation Programs; Final Rule

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 61

RIN 1024–AC44

Procedures for State, Tribal, and Local Government Historic Preservation Programs

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: Through this rule, the National Park Service (NPS) revises requirements (and the description of its own administrative procedures) for State, tribal, and local historic preservation programs carrying out actions under the National Historic Preservation Act of 1966, as amended. Many revisions derive from the 1992 amendments to the National Historic Preservation Act. Other changes reduce the regulatory burden on, and provide more flexibility to, State, tribal, and local historic preservation programs in response to the President's Regulatory Reinvention Initiative and Executive Order 12866. Still others are made in recognition of the changing and maturing professional practice of historic preservation nationwide.

DATES: This rule is effective on June 7, 1999.

FOR FURTHER INFORMATION CONTACT: John W. Renaud, 202–343–1059, FAX 202–343–6004, John__Renaud@nps.gov (E-mail).

SUPPLEMENTARY INFORMATION:

Background

36 CFR part 61 is promulgated pursuant to the National Historic Preservation Act of 1966, as amended, (16 U.S.C. 470 *et seq.*) which creates the national historic preservation program, which is a partnership among Federal, State, tribal, and local governments, nonprofit and for profit organizations, and individual citizens. The Act also provides funding for this partnership through the Historic Preservation Fund. This partnership is dedicated to the preservation of historic properties (as defined by the Act) nationwide which provide the foundation of our Nation's rich and irreplaceable heritage. Through this partnership, the vital legacy of cultural, educational, aesthetic, inspirational, and economic benefits of our patrimony is maintained and enriched for future generations of Americans. 36 CFR part 61 provides the regulatory framework for voluntary participation by State, local, and tribal governments in this national program administered by the Secretary of the Interior through the Director of the National Park Service (NPS). As of the date of publication of this rulemaking, all 59 States (as defined by the Act) participate as do more than 1,100 local governments and 17 tribal governments. The tribal sections (currently reserved) of this rule, which will address more particularly the needs of tribes participating in this program, may eventually lead to the participation in the national historic preservation program of the more than 300 federally recognized Indian tribes. NPS is responsible for providing national standards, guidance, and technical assistance to the State, tribal, and local historic preservation programs participating in the national historic preservation program. NPS also provides quality control for the activities funded by the Historic Preservation Fund grants-in-aid and matching monies. The responsibility for most decision making in the State, tribal, and local government programs and the selection of specific projects and activities lies largely with each State, tribal, and local government based on its particular needs. Public participation is a crucial part in guiding the course of this national historic preservation program.

This revision to 36 CFR part 61 is needed as the former regulation (promulgated in 1984) became outmoded due to changes in statute and the natural evolution of the national historic preservation program. The National Historic Preservation Act Amendments of 1992 (Title XL of Pub. L. 102–575) made a number of substantive as well as technical changes to the subject matter covered by these rules. Through day-to-day administration of the program, as well as through communication with partners in the national historic preservation program, NPS has become aware of the need for other changes to these rules.

One of the significant policy changes made to the Act in the 1992 amendments directed a substantive and meaningful role for Indian tribes within the national historic preservation program. The United States has a unique legal relationship with Indian tribes set out in the Constitution of the United States as well as in treaties, statutes, and Federal court decisions. The full participation of tribes within the national historic preservation program is a national policy goal and is recognized within this rule.

Pursuant to the 1992 amendments to the Act, Indian tribes can be approved by the Secretary of the Interior to assume formal responsibility for carrying out on tribal lands any or all of those functions previously assigned to State Historic Preservation Officers. Indian tribes can use (and to date 17 tribes have used) the statutory language of that amendment and the existing regulatory framework set out in this rule and in related regulations to assume those formal responsibilities. Sections 61.8 and 61.9 of this rule (currently reserved) will address in more detail the process for tribal assumption of program responsibilities. These two sections will also be used to implement the statutory mandate for providing greater flexibility in the application of statutory and regulatory requirements to tribal programs, in order to accommodate tribal values to the greatest extent feasible.

Sections 61.8 and 61.9 which are currently under development by NPS will be issued for general review and comment in the **Federal Register** and eventually issued for effect. In addition to those sections, other changes to this rule may be proposed in further recognition of the role of tribes in this program and will be issued for review and comment within the **Federal Register** at an appropriate time for public consideration and comment. In developing § 61.8, § 61.9, and other changes to the rule, NPS will consult with the tribes already participating in the program and with other interested parties.

The 1992 amendments to the Act also included a more formal recognition (within the breadth of programs authorized by the Act) of properties of traditional religious and cultural importance to Indian tribes or Native Hawaiian organizations. It is the intent of this rule to ensure that, to the extent feasible, State and local governments operating under this rule identify, evaluate and protect these unique classes of properties in consultation with Indian tribes and Native Hawaiian organizations in activities listed in section 101(b)(3) of the Act for States and section 101(c) of the Act for local governments.

Revision of 36 CFR part 61 is the appropriate means to resolve many of these issues. The national historic preservation program has grown in competency, responsibility, and accountability over the years. There also has been a maturation in the professional practice of historic preservation nationwide. By placing more reliance on State, tribal, and local governments, by eliminating unnecessary detail and procedures, and by expressing a more flexible oversight philosophy, these revisions to 36 CFR

part 61 can reduce the need for a future rulemaking.

The penalties for noncompliance as specified in this rulemaking include revoking the approved program status of any noncompliant party as mandated by statute. The regulation also recognizes government-wide requirements for Federal grants that include penalties (for noncompliance with the terms of such grants) ranging from increased oversight and reporting, to recovery of Federal funds, to suspension from the grant program until requirements are met. Monitoring these regulatory requirements is accomplished through a periodic review of programs; with quality control of documents such as nominations to the National Register of Historic Places and Federal Historic Preservation Tax Incentive applications that are forwarded by the State to NPS; and, by evaluation of standard reports on measures and accomplishments made using Federal grant money.

36 CFR part 61 provides the general procedural framework for State, local, and tribal historic preservation programs. Procedures can be found elsewhere for specific activities carried out by those programs and referred to in this document; e.g., 36 CFR part 60 for the National Register of Historic Places and 36 CFR part 67 for Federal Historic Preservation Tax Incentives. National standards and guidance on general topics of applicability such as survey, planning, treatment of historic properties, and professional qualifications can be found in ''the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation'' that can be obtained from NPS.

Comments on and Revisions to the Proposed Rule

This section summarizes and responds to comments received by NPS in response to the proposed revisions to 36 CFR part 61 published in the **Federal Register** on October 2, 1996 (61 FR 51536). This section summarizes those comments and is organized by general subject matter. Citations to the applicable part of the proposed rule are provided. Changes made as a result of the comments are minor and clarify rather than substantively change the proposed rule. This eliminates the normal need to repeat in this document the section-by-section rationale for the changes made to the 1984 rule. The Section-by-Section Analysis in the preamble to the proposed rule remains an accurate description of the rationale for the detailed changes except where modified in this document. For example, the Department of the Interior Solicitor's Office pointed out that the definition of ''State program'' in § 61.2(e) of the proposed rule leaves out statutory elements of a State program as described in section 101(b) of the Act. We have revised the definition accordingly.

Requirements for Certified Local Government Historic Preservation Review Commissions, State Historic Preservation Program Staff, and State Historic Preservation Review Boards

Comment: The largest number of comments received (15 in total) supported making a specific discipline (or disciplines) a requirement for each State's historic preservation program staff (State staff) in § 61.4(e)(1) and/or for each State's Historic Preservation Review Board (Review Board) in § 61.4(f)(1). Some commenters objected to the proposed elimination of specific mandatory disciplines while other commenters proposed that new disciplines be added as requirements. The proposal to eliminate Architecture and Prehistoric and Historic Archeology as requirements were most commonly mentioned. Additionally, the suggestion for State staff and Review Boards to have professional expertise in traditional cultural resources was promoted by a number of commenters especially for States in which there are extensive concentrations of such resources.

Response: It is the position of NPS that full-time State staff and Review Board member professional proficiency in History, Architectural History, and either Prehistoric or Historic Archeology is needed to provide a common national baseline given the frequency with which all State programs deal with certain repetitive classes of historic properties (as defined by the Act). Experience has shown that other disciplines may well be needed by some State programs but not by all State programs, and not necessarily full time. For example, traditional cultural properties expertise would be appropriate in a State with large concentrations of such properties. In States where this is not the case, this expertise may be less of a concern. These determinations are best made by the State Historic Preservation Officer (SHPO) and not by NPS through this rule. However, NPS expects each SHPO to maintain a State staff and Review Board appropriate to the historic properties (as defined by the Act) in that State.

Comment: Two commenters stated that all disciplines listed in the Act should be required on every State staff and Review Board.

Response: NPS disagrees. To require all disciplines cited in the Act would be an unnecessary burden for State programs in many instances given State resources, historic preservation needs, and program emphases. NPS expects each SHPO to fill professional positions as necessary to balance historic property, customer or constituent, and historic preservation needs of the State and to obtain expertise in disciplines as appropriate.

Comment: Three people expressed the view that there should be no specific required disciplines for either State staff or Review Board mandated in §§ 61.4(e)(1) and (f)(1).

Response: NPS disagrees. As stated above, it is the position of NPS that a common national baseline of historic preservation professionals on each State staff and Review Board is needed. This position was reached after detailed consultations with State Historic Preservation Officers over a period of several years.

Comment: Two commenters thought that only the disciplines of History, Architectural History, and Prehistoric or Historic Archeology could be represented on a State program's staff or Review Board, and that no other discipline could be allowed. They concluded that this would mean a State program would be without expertise in many essential areas. They also objected to the apparent position held by NPS that other disciplines are not as valuable as the required disciplines.

Response: Sections 61.4(e) and 61.4(f) have been revised to make clear that the required disciplines are not the only disciplines that can or should be represented in the ''professional positions.'' This rule, however, does not designate which additional disciplines to select. It is the position of NPS that each SHPO knows best what additional disciplines are needed to meet its particular needs and resources. Furthermore, the fact that certain disciplines are minimum regulatory requirements for State staffs and Review Boards does not mean that those disciplines are necessarily more critical than the other disciplines in a specific State.

Comment: One commenter thought that for a Certified Local Government's (CLG's) historic preservation review commission (Commission) to meet the requirements of § 61.6(e)(2)(i), every discipline listed in ''the Secretary's (Historic Preservation) Professional Qualifications Standards'' would have to be represented on the Commission.

Response: This is not the case. The Act requires that professional membership on a Commission be drawn

from among (but not from all of) such disciplines to the extent available in the community. It is at the discretion of each SHPO as expressed in the Statewide local government certification procedures, how many and which disciplines should be represented on each Commission.

Comment: One person asked, concerning § 61.4(f)(1), who within each State has the authority to select the professional disciplines (beyond the requirements set by this rule) for the Review Board.

Response: The SHPO, pursuant to Section 301(12)(A) of the Act, has the authority to select the professional disciplines unless State law specifies to the contrary.

Comment: Three individuals stated that the alternative composition provisions of §§ 61.4(e)(2) and (f)(2) are unnecessary given how easy it is to meet the basic requirements for State staff and Review Board professional membership.

Response: NPS disagrees. The alternative composition provisions remain necessary and appropriate in allowing flexibility for State programs. In addition, Indian tribes are currently using this regulatory framework for assuming historic preservation responsibilities parallel to some or all State Historic Preservation Officer duties. The alternative composition provisions offer very important flexibility for accommodating these new tribal programs that vary greatly in their scope, size, and focus. Section 61.8, currently under development, will expand on these provisions for tribal programs.

Comment: One person asked what constitutes ''demonstrated competence, interest, or knowledge in historic preservation'' as specified in § 61.4(f)(1), how this is documented, and expressed concern that this requirement is in conflict with a State law that requires that only a majority of members have such ''demonstrated competence, interest, or knowledge in historic preservation.''

Response: Any ''professional'' meeting ''the Secretary's (Historic Preservation) Professional Qualifications Standards'' automatically meets the ''demonstrated competence, interest, or knowledge'' test. For other Review Board members, NPS expects each SHPO to use a rule of reasonableness to determine whether a person has competence, interest, or knowledge in historic preservation. For the programs and activities subject to this rule, the provisions of 36 CFR part 61 take precedence over conflicting State law.

Comment: Another person thought that requiring in § 61.4(f)(1) that every Review Board member have a demonstrated ''interest, competence, or knowledge in historic preservation'' meant that all Review Board members must be ''historic preservation practitioners'' who meet ''the Secretary's (Historic Preservation) Professional Qualifications Standards'' for the discipline of ''Historic Preservation.''

Response: There is no such requirement.

Comment: One commenter suggested that ''as appropriate'' be added to § 61.6(e)(2)(i) to ensure that a ''professional'' would not be appointed to a Commission just because he or she is the only professional available in the community.

Response: This rule does not require a CLG to limit its Commission membership selection criteria to the Federal minimum requirements, provided that its additional selection criteria are not inconsistent with the purposes of the Act and Statewide procedures.

Comment: One person thought that the provision in § 61.6(e)(2)(ii) matching Commission membership requirements to those for the Review Board was too restrictive because in many States, Commissions and Review Boards have very different (although overlapping) responsibilities.

Response: NPS agrees and has modified the language of the rule accordingly to place an emphasis on local needs and functions for State procedure requirements relating to Commission membership.

Comment: Two commenters expressed concern that requiring only three disciplines on each Review Board means that only those three disciplines could be professional members of the Commission pursuant to § 61.6(e)(2).

Response: State programs and local offices can, and often do, set additional membership requirements that are responsive to particular State and local needs and issues. Nothing in this rule prohibits a CLG from appointing to its Commission more than the minimally required number or types of professional members.

Comment: Two commenters expressed concern that reducing the minimum number of Review Board meetings from three to one a year (§ 61.4(f)(4)), would make it more difficult for a State historic preservation office to justify State budgetary authority for additional meetings necessary to carry out Review Board responsibilities. Of particular concern was timely review of nominations to the National Register of Historic Places.

Response: NPS agrees and language has been added to make clear that each Review Board should meet as often as necessary to meet national historic preservation statutory and regulatory requirements.

Comment: Another individual expressed concern about the proposed change in § 61.4(f)(3) to extend from six months to one year the time period in which a vacancy on a Review Board could exist prior to NPS intervention.

Response: The rule change parallels the move in § 61.4(f)(4) to a one Review Board meeting per year minimum. If a Review Board meets only once a year, a ten-month-long vacancy between meetings would not necessarily be problematic. Note, however, that the rule retains the requirement that a vacancy be filled in a ''timely'' fashion. NPS would expect a more rapid response to a vacancy from a State that holds quarterly Review Board meetings.

Other State and Local Program Issues

Comment: One commenter raised the question as to whether municipalities were meant to be included in § 61.4(b)(4) as part of ''any qualified nonprofit organization, educational institution, or otherwise pursuant to State law'' regarding a SHPO's ability to carry out activities via contract or cooperative agreement. If so, the commenter suggests that this is in conflict with § 61.6(f)(1) which prohibits SHPOs from delegating the authority to nominate properties directly to the National Register.

Response: A SHPO may use third parties, including municipalities, to carry out aspects of the National Register process, but may not delegate the authority to nominate properties directly to the National Register. This section provides flexibility to each SHPO, but does not allow the SHPO to divest himself or herself of statutory authorities and responsibilities. NPS has added language to clarify this point.

Comment: One person found it problematic that Federal and State requirements for Commissions might not be stringent enough to justify conducting certain SHPO responsibilities through a CLG pursuant to § 61.6(d) if that CLG only meets the minimum requirements specified in § 61.6(e).

Response: It is each SHPO's responsibility to ensure that a CLG has adequate capacity to carry out any additional responsibilities.

Comment: Two commenters opposed the option in § 61.4(b)(3) to waive the face-to-face meeting requirement for the

Review Board (or a Commission acting for the Review Board) in considering a National Register nomination because they believe face-to-face meetings are an important part of the National Register and public participation process.

Response: NPS recognizes the value inherent in a face-to-face discussion of any nomination to the National Register. Therefore this provision is optional and can be used only when all parties (including the chief elected local official as the representative of the general public) consent to waive the face-to-face meeting.

Comment: Six commenters opposed the options provided in § 61.4(b)(3) to allow broader CLG participation in the National Register process because they believe that many CLGs may not be interested in, qualified for, or sufficiently objective to take the place of the Review Board in reviewing nominations. They expressed concern that the National Register process could be compromised.

Response: Even if a SHPO chooses to offer this option, if a CLG is not interested in participating more broadly in the National Register process, nothing in this rule would compel it to do so. However, in those situations in which a CLG has so requested, it must meet all applicable program criteria thus ensuring minimum levels of professional credibility and accountability. The integrity of the National Register process is protected also by the appeals process specified in 36 CFR part 60. Note that section 101(c)(2) of the Act sets parameters for CLG participation in the National Register process.

Comment: One person suggested that the provision in § 61.4(b)(3) requiring owner consent to waive a public meeting for the Review Board (or Commission) review of a National Register nomination conflicts with the owner objection provisions in section 101(a) of the Act regarding district nominations.

Response: NPS disagrees. NPS believes that there is no inconsistency because the subject matter is different; i.e., whether to waive a public hearing for considering National Register eligibility (in this case) versus whether historic properties should be listed in the case of district nominations.

Comment: Four people asserted that requiring consent from the chief elected local official for the waiver of the requirement for a public meeting as stated in § 61.4(b)(3) is unnecessary and could be eliminated or, alternatively, replaced by a notification.

Response: NPS disagrees. NPS believes that the consent of the chief elected local official (as the community's representative) is important in waiving a community's right to an open and public consideration of a property's nomination to the National Register.

Comment: One person requested that the rule provide detailed technical guidance about how the National Register-related public participation provisions of § 61.4(b)(3) should be carried out by interested SHPOs, Review Boards, and Commissions.

Response: NPS agrees with the need for technical guidance. However, the technical guidance does not need to be presented as part of this rule. NPS intends to prepare this technical guidance in consultation with affected parties and to issue it as soon as possible.

Comment: Four comments stated that State survey and inventory data (§ 61.4(b)(2)) which includes information on the absence of National Register eligible properties or on properties for potential future nomination to the National Register are wasteful and could lead to restriction of private property rights.

Response: NPS disagrees. Typically, though not a focus of all surveys, gathering and keeping data on ''no properties found'' (i.e., areas which include properties that are not National Register eligible) is ultimately highly cost effective. This information reduces the need for costly re-surveys to plan for both public and private projects. There is no evident reduction of property rights due to this provision because neither the Act nor this rule gives the SHPO the authority to carry out surveys on private land without owner permission. Furthermore, a property cannot be listed on the National Register if the private property owner (or majority of owners for districts) objects.

Comment: One person suggested changing the phrase ''absence of historic properties'' in § 61.4(b)(2) to ''absence of particular kinds of properties'' because a finding of no historic properties in an area may have been based only upon a particular class or type or survey, but be misconstrued to mean that there are no historic properties of any kind. For example, in a survey for a particular class or type of resources (e.g., archaeology only or bridges only), other kinds of historic properties resources would not necessarily be identified.

Response: While NPS agrees, changing the rule would weaken the point of this provision which is to highlight the cost-effectiveness and usefulness for planning purposes of knowing that there is no historic property in the area. Reminders (such as this comment) on the use and limitations of such ''negative'' surveys are more appropriately addressed, NPS believes, in a different venue; e.g., ''the Secretary's Standards and Guidelines for Identification'' or similar technical publications.

Comment: One person stated that the SHPO may not have authority to ensure that CLG survey and inventory data ''can be readily integrated into . . . local planning processes'' as stated in § 61.6(e)(3).

Response: The chief elected local official's signature on the CLG certification agreement carries with it a commitment to follow the Federal and State requirements for the CLG program. Also, this rule does not require the actual integration into local systems—clearly a local decision—but rather that the data are in a format compatible with the local planning process(es).

Comment: One person expressed concern that § 61.6(e)(1) seemed to be highlighting regulatory tools for local historic preservation programs rather than encouraging non-regulatory approaches to historic preservation.

Response: These provisions for CLG requirements follow the Act which specifically sets forth the use of regulatory tools by mandating that CLGs must enforce appropriate State and local legislation for the ''designation'' and ''protection'' of historic properties (see section 101(c)(4) of the Act). However, nothing in this rule should be interpreted to advocate only regulatory approaches to historic preservation at any level of government.

Tribal Issues

Comment: One person wondered why the tribal sections of the rule were reserved and suggested that information be provided explaining the status of this material.

Response: NPS believes that it is premature to provide language (either inclusive or exclusive) in this rulemaking that provides regulatory interpretation of the statutory mandate to establish tribal programs under section 101(d) of the Act. Preliminary consultation with the tribes and other interested parties is now underway but has not yet been completed, and the **Federal Register** review and comment process must still be undertaken.

Comment: One person asked what impact this rulemaking will have on the development of procedures for tribal historic preservation programs under section 101(d) of the Act. Concern was expressed that the State and local requirements contained in this rule would either limit or predetermine the direction of tribal program procedures.

Response: This rulemaking will not constrain or predetermine the development of tribal procedures because section 101(d) of the Act calls for flexibility and modifications to accommodate tribal settings. Any requirement for State programs is subject to modification for tribal programs in accordance with rules under NPS development.

Comment: One person recommended exempting tribes from State Historic Preservation Officer responsibilities specified in this rule.

Response: The position of NPS is that such a blanket exemption for the tribes is neither appropriate nor consistent with the intent and meaning of the Act. By law, State historic preservation program requirements provide a point of reference in the establishment of tribal historic programs under section 101(d) of the Act. In furtherance of the requirements of section 101(d) of the Act, § 61.8 of this rule (currently reserved and under development in consultation with the tribes) will propose significant flexibility for tribal programs by allowing for the case-by-case waiver or modification of requirements in the Act and its attendant regulations in order to accommodate tribal values to the greatest extent feasible. In the meantime, tribes already choosing to participate in the national program can avail themselves of the provisions of § 61.4 that allow for case-by-case approval of various program alternatives, as well as the provisions of § 61.10 that allow for case-by-case waiver of those requirements of this rule not otherwise required by statute or other regulation and as long as the purposes, conditions, or requirements of the Act would not be compromised.

Comment: Another concern expressed was that no definition of ''tribal historic preservation program'' or ''tribal program'' is included in this rulemaking.

Response: Again, these definitions will be developed as part of the consultation process for drafting the regulations for the tribal preservation programs and as such will be added to this rule at a later date.

Comment: One person suggested adding section 101(d) to the other referenced sections of the Act in § 61.2(a) of this rule.

Response: NPS agrees with the importance of section 101(d), but not with referencing it in § 61.2 of this rule. Section 61.2 is the ''definitions'' section of this rule and, unlike the other referenced sections of the Act, section 101(d) contains no definitions.

Comment: One person suggested changing the term ''Native Alaskan corporations'' to ''Native Alaskan groups.''

Response: NPS cannot adopt this suggestion. The term ''corporation'' comes directly from the definition of Indian tribe in section 301(4) of the Act which in turn is based on the definitions in section 3 of the Alaska Claims Settlement Act (43 U.S.C. 1602).

National Park Service (NPS) Roles

Comment: Five commenters expressed concern about the appropriateness of, and/or the lack of, a precise explanation in § 61.3(a) of ''management by exception'' for the administration of historic preservation programs under the Act.

Response: ''Management by exception'' is the preferred policy approach of NPS in administering the national historic preservation program. It presumes that State, tribal, and local programs are being administered in an accountable fashion in meeting all applicable government-wide requirements unless proved to the contrary. A management-by-exception approach uses oversight and analysis of systems and quality control processes rather than an in-depth, project-by-project approach. NPS has adopted this management policy wherever warranted in recognition of both the growing maturation of the national program, as well as changing Administration and Congressional directives concerning the relationship between the Federal Government and State, tribal, or local governments. However, whenever situations warrant, NPS can, and will, apply more rigorous oversight to ensure that requirements are met.

Comment: One person expressed the view that NPS is sometimes too responsive to SHPO views and does not hear the concerns of the State's clients.

Response: NPS makes every effort to serve equally each member of the national partnership in administering the national historic preservation program and considers all constituent comments. Oversight and accountability are not affected by our long-standing relationship with the State historic preservation programs.

Comment: Two people asked for clarification of ''independent peer review'' in § 61.3(a) as applied to a State, tribal, or local government substituting its own fiscal audit and management systems for comparable requirements set by the Secretary.

Response: ''Independent peer review'' is defined as a review carried out by entities (public or private) who are not a part of NPS but who can provide comparable independent, objective, and knowledgeable oversight, analysis, and review that inspires confidence that government-wide and Act-specific audit and management requirements are being met.

Comment: One person opposed eliminating the requirement that each SHPO make an annual certification that it has a fully qualified staff and Review Board because, in the commenter's opinion, SHPOs may not always inform NPS when there is a vacancy.

Response: The former regulatory requirement is redundant. The annual grant agreement (executed between NPS and each State participating in the national program) includes as a condition for receiving the grant award the mandate that the State program meets and will continue to meet all of the applicable requirements of the Act and this rule.

Comment: One person suggested amending ''appropriate action'' to ''suspension of approved status'' in §§ 61.4 (e) and (f) regarding the result of NPS intervention when a vacancy has not been filled in a timely fashion.

Response: NPS disagrees. NPS needs the flexibility to take a range of administrative steps (which might include suspension of approved status) to fit each situation.

Comment: One person thought that it is inconsistent to say in § 61.4 that State program reviews would take place at least once every four years but more often if the Secretary deems necessary.

Response: This confuses the minimum frequency of review of each State that must take place with the possible number of reviews that can take place. The Act requires an evaluation at least once every four years. Government-wide grant procedures authorize, and good management demands, an evaluation whenever the situation merits it.

Comment: One person stated that the current State program reviews were not frequent enough to address adequately serious problems.

Response: NPS disagrees. Nothing in the current system prevents NPS from undertaking a State program review whenever it believes one is warranted.

Comment: One person suggested that explicit time frames be added for the various stages of the State program review process.

Response: NPS disagrees. NPS needs the regulatory flexibility to tailor schedules to specific situations.

Comment: One person wondered what would constitute ''a major program inconsistency with the Act'' that would be sufficient to suspend a State

program's approved status after a State program review (see § 61.4(d)).

Response: NPS recognizes that loss of approved program status is not the appropriate administrative response to minor compliance problems. Refusal to carry out statutory requirements, a pattern of gross negligence, and illegal use of grant funds are among the factors that could contribute to a program's suspension or termination. However, the determination of ''a major program inconsistency'' must be done on a case-by-case basis.

Comment: Three people stated that § 61.6(c) should be changed to allow SHPOs with approved programs and NPS-certified CLG criteria and procedures to certify CLGs without NPS concurrence.

Response: NPS does not have the statutory authority to do this. The dual certification by the SHPO and NPS (acting for the Secretary) is specifically required by section 101(c)(1) of the Act.

Comment: One person further suggested changing § 61.6(e)(5) to vest SHPOs with the sole authority for an involuntary decertification of a CLG.

Response: NPS disagrees. Decertification procedures must generally parallel those for the certification of qualified local governments.

Terminology, Definitions, and References

Comment: Two commenters asked for clarification, in § 61.3(b), of the regulatory force of the ''Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation.''

Response: NPS has added language to the rule to clarify two aspects of this issue. NPS will use the Standards set forth in the ''Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation'' as technical performance standards for matters covered by 36 CFR part 61. NPS may also use as technical performance standards (for matters covered by this part) additional guidance provided from time to time by NPS after appropriate consultation and notice. This additional guidance may include, but is not limited to, selected Guidelines set forth in the ''Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation.''

Comment: Another person asked what is the relationship between the current initiative of NPS to revise ''the Secretary's (Historic Preservation) Professional Qualifications Standards'' and the changes to §§ 61.4(e) and (f) of this rule.

Response: Revising ''the Secretary's (Historic Preservation) Professional Qualifications Standards'' will not affect their regulatory relationship with this rule; i.e., in order for a person to satisfy a regulatory requirement for a historic preservation professional, that person must meet ''the Secretary's (Historic Preservation) Professional Qualifications Standards.'' Note that the grandfather provision in § 61.3(c) has been modified to account for changes to these Standards. Note also that the name of the Standards will officially change to ''the Secretary of the Interior's Historic Preservation Professional Qualifications Standards'' when they are issued in the **Federal Register**. To signal this forthcoming change, ''Historic Preservation'' is placed in parentheses as part of the current title of the Standards in this rulemaking.

Comment: One person suggested restoring to this rule all statutory definitions, Standards, and regulatory material that in the former rule were quoted verbatim.

Response: Repetition of standards or statutory and regulatory material would make this rule unwieldy to use and is unnecessary at this point in the program's history. These materials are widely available and known to customers. Nevertheless, NPS has included in § 61.6(e)(1) the CLG program definitions for ''designation'' and ''protection'' because they are relatively new and represent a significant statutory addition to CLG requirements.

Comment: One person suggested that in light of the elimination of the former Appendix B (the list of SHPO addresses), the regulation identify a central source to locate information.

Response: NPS agrees and have added appropriate language.

Comment: Two people found the references in this rule to the *National Register Programs Guideline* (*NPS–49*) confusing without further explanation.

Response: NPS agrees and has replaced them with more general references to NPS administrative guidance.

Comment: One person suggested replacing ''cultural resource'' with ''historic resource'' or ''historic property'' to be consistent with the Act.

Response: NPS has adopted this suggestion and used the term ''historic property'' as defined in section 301 of the Act except where quoting the Act.

Comment: One person suggested adding to § 61.2 a definition of ''partnership.''

Response: NPS has not defined the term ''partnership'' as suggested because, aside from a common commitment to the purposes of the Act, ''partnership'' is not amenable to a single definition. In general, however, the word ''partnership,'' in the context of the national historic preservation program, recognizes that this is a nation-wide initiative including full participation of not only the Federal but also State, tribal, and local governments; the not-for-profit as well as the for-profit sector; and, individual citizens.

Comment: One person suggested that the role of CLGs in the section 106 process be described in § 61.6(e)(1).

Response: This suggestion was not considered because that responsibility is more appropriately addressed by the Advisory Council on Historic Preservation through 36 CFR part 800.

Comment: One person suggested quoting in § 61.6(f) the text of section 101(c)(2) of the Act concerning National Register nominations within the jurisdiction of a CLG.

Response: NPS believes that the cross reference is sufficient.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, the National Park Service (NPS) consulted extensively with State and local historic preservation programs prior to publishing the proposed revisions to the rule for general review and comment in the **Federal Register** (61 FR 51536) concerning which NPS received 38 comments. All governmental members of the national historic preservation partnership rely upon the public to help guide and otherwise assist in the functions of their historic preservation programs. Consequently, NPS encourages public participation in all of the programs under the purview of this rule. NPS welcomes comments at any time from any interested person concerning the direction, administration, oversight, or any other aspect of these programs. Interested parties should send written comments regarding these programs to Heritage Preservation Services, National Center for Cultural Resource Stewardship and Partnership Programs, National Park Service, 1849 C Street, NW (NC Suite 200), Washington, D.C. 20240 or via the National Park Service Home Page for cultural programs at http://www.cr.nps.gov.

Drafting Information: The primary author of this rule is John W. Renaud, Heritage Preservation Services, National Center for Cultural Resource Stewardship and Partnership Programs, National Park Service, 1849 C Street NW (NC Suite 200), Washington, D.C. 20240.

Paperwork Reduction Act

The collection of information contained in this rule has been approved by the Office of Management and Budget under 44 U.S.C. 3507 *et seq.* and has been assigned clearance number 1024–0038. No comments were received on notice of submission to the OMB and the request for comments published in the **Federal Register** (62 FR 34484). The information is being collected as part of the process for reviewing the procedures and programs of State and local governments participating in the national historic preservation program and the Historic Preservation Fund grant program. The information will be used to evaluate those programs and procedures for consistency with the National Historic Preservation Act of 1966, as amended, and compliance with government-wide grant requirements. The obligation to respond is required to obtain a benefit under these programs. Note that a Federal 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. No assurance of confidentiality is provided to respondents with the exception of locational information concerning some properties included in government historic preservation property inventories. Pursuant to section 304 of the National Historic Preservation Act of 1966, as amended, release of information is tightly controlled when such release could have the potential of damaging those qualities which make a property historic or of vital cultural or religious significance.

The public reporting burden for the collection of this information is estimated to average 14.06 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Ms. Diane M. Cooke, Information Collection Officer, National Park Service, 1849 C Street NW, Washington, D.C. 20240 and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior (1024–0038), Washington, D.C. 20503.

Compliance With Other Laws

This rule was reviewed by the Office of Management and Budget under Executive Order 12866. The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). The overall economic effects of this rulemaking should be negligible. There are no expected increases in costs or prices for consumers, individual industries, Federal, State or local governments, agencies or geographic regions.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rule will not impose a cost of $100 million or more in any given year on local, State, or tribal governments or private entities.

In accordance with Executive Order 12630, the NPS has determined that this rule does not have significant takings implications. The rule revises administrative procedures for the organization of State, tribal, and local historic preservation offices. This rule does not impact private property owners.

In accordance with Executive Order 12612, the NPS has determined that the rule does not have significant Federalism implications. State, tribal, and local government participation in these programs is voluntary. In the development of this rule, the NPS consulted State and local governments currently participating in these programs. The NPS has achieved the consensus of its State and local government partners that this rule should be published. No State or local government has opposed the promulgation of this rule.

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

This rule is not a major rule under the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)).

The National Park Service has determined that this rulemaking will not have a significant effect on the quality of the human environment, health, and safety because it is not expected to:

(a) increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) introduce incompatible uses which compromise the nature and characteristics of the area or cause physical damage to it;

(c) conflict with adjacent ownership or land uses; or,

(d) cause a nuisance to adjacent owners or occupants.

Based on this determination, the regulation is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental guidelines in 516 DM 6, Appendix 7.4D (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 61

Grant programs-natural resources, Historic preservation, Reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR Chapter I is amended as follows:

1. 36 CFR Part 61 is revised to read as follows:

PART 61—PROCEDURES FOR STATE, TRIBAL, AND LOCAL GOVERNMENT HISTORIC PRESERVATION PROGRAMS

Sec.
61.1 Authorization.
61.2 Definitions.
61.3 Implementation of this part.
61.4 State programs.
61.5 Grants to State programs.
61.6 Certified local government programs.
61.7 Subgrants to certified local governments.
61.8 Tribal programs. [Reserved]
61.9 Grants to tribal programs. [Reserved]
61.10 Waiver.
61.11 Information collection.

Authority: 16 U.S.C. 470 *et seq.*

§ 61.1 Authorization.

The National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 *et seq.*):

(a) Requires the Secretary of the Interior (Secretary) to promulgate regulations for:

(1) Approving and overseeing State historic preservation programs;

(2) Certifying local governments to carry out the purposes of the Act;

(3) Ensuring that applicable State Historic Preservation Officers (SHPOs) allocate to certified local governments (CLGs) a share of grants that the SHPOs receive under the Act; and

(4) Assisting Indian tribes in preserving their particular ''historic properties'' (as defined by the Act);

(b) Directs the Secretary to administer a program of grants-in-aid to States and Indian tribes for historic preservation projects and programs that the Secretary has approved; and

(c) Requires the Secretary to make available information concerning professional standards, methods, and techniques for the preservation of

''historic properties'' (as defined by the Act) and the administration of historic preservation programs.

§ 61.2 Definitions.

As used in this part:

(a) All terms that the National Historic Preservation Act of 1966, as amended, defines have the same meaning in the regulations in this part that the statute provides; see especially sections 101(a)(1)(A), 101(b), 101(c)(4), 108, and 301.

(b) *Act* means the National Historic Preservation Act of 1966, as amended, (16 U.S.C. 470 *et seq.*).

(c) *Chief elected local official* means the elected head of a local government.

(d) *The Secretary's Standards* means only the ''Standards'' portions and not the ''Guidelines'' portions of ''the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation.'' The Secretary's Standards provide broad national principles of archeological and historic preservation practices and methods. ''The Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation'' also contains ''the Secretary's Guidelines'' which provide broad national guidance on how to apply ''the Secretary's Standards.''

(e) *State historic preservation program* or *State program* means a State government organization or program meeting the requirements that section 101(b) of the Act specifies.

§ 61.3 Implementation of this part.

(a) *National Park Service policy of management by exception.* The National Park Service (NPS) will administer the regulations in this part in such a way (and where feasible) as to:

(1) Limit the use of direct Federal management review procedures to high risk situations, to new programs, or to activities that are appropriate for the Federal Government to oversee;

(2) Presume that State, tribal, and local government historic preservation officials manage their programs in an accountable way unless situations indicate the contrary; and

(3) Rely to the maximum extent feasible on State, tribal, and local government systems of financial and program management that meet Federal standards. At the discretion of the Secretary, each State, tribal, and local government may substitute its own fiscal audit and management systems for the Secretary's comparable fiscal audit and management requirements, so long as the State, tribal, or local government system establishes and maintains accounting standards substantially similar to Federal standards and provides for independent peer review.

(b) *The Secretary's Standards.* NPS will use the Secretary's Standards as technical performance standards for matters covered by this part. NPS may also use as technical performance standards (for matters covered by this part) additional guidance that NPS identifies and provides from time to time after appropriate consultation and notice.

(c) Each State historic preservation program staff member, State Historic Preservation Review Board (Review Board) member, and certified local government (CLG) historic preservation review commission (Commission) member whom the Secretary has approved as meeting ''the Secretary's (Historic Preservation) Professional Qualifications Standards'' will retain that status, regardless of subsequent revisions to those Standards, until such time as that individual no longer works in that program, or serves on that Review Board, or serves on that Commission with which that individual was affiliated as of the date of that individual's approval.

(d) You may obtain publications and other information mentioned in this part by contacting: Heritage Preservation Services, National Center for Cultural Resource Stewardship and Partnership Programs, National Park Service, 1849 C Street NW (NC Suite 200), Washington, D.C. 20240 or via the National Park Service Home Page for cultural programs at http://www.cr.nps.gov.

§ 61.4 State programs.

(a) For a State to participate in the program that this part describes, the Governor must appoint and designate a State Historic Preservation Officer (SHPO) to administer the State historic preservation program.

(b) It is the responsibility of the SHPO to carry out the duties and activities that section 101 (b)(3) of the Act describes. In performing those duties and activities:

(1) The SHPO must carry out a historic preservation planning process that includes the development and implementation of a comprehensive statewide historic preservation plan that provides guidance for effective decision making about historic property preservation throughout the State.

(2) The SHPO, in addition to surveying and maintaining inventories of historic properties, may also obtain:

(i) Comparative data valuable in determining the National Register eligibility of properties;

(ii) Information on properties that may become eligible for the National Register of Historic Places with the passage of time; and/or

(iii) Information on the absence of historic properties for use in planning for public and private development projects.

(3) The SHPO must provide for adequate public participation in the State historic preservation program as a whole.

(i) As part of the process of recommending a property to the National Register, the SHPO must comply with the consultation and notification procedures contained in 36 CFR part 60.

(ii) The SHPO may authorize other persons or entities to fulfill the notice requirements in 36 CFR part 60 pursuant to the Secretary's written guidance.

(iii) The SHPO also may authorize the historic preservation review commission (Commission) of a certified local government (CLG) to act in place of the State Historic Preservation Review Board (Review Board) for the purpose of considering National Register nominations within its jurisdiction, provided that the Commission both meets the professional qualifications required for the Review Board when considering such nominations and otherwise follows the Secretary's written guidance.

(iv) In accordance with the Secretary's written guidance and with the consent of both the property owners in a nomination and the chief elected local official, the Review Board (or the Commission acting in its place) may consider the nomination without a face-to-face meeting.

(4) The SHPO may carry out all or any part of his or her responsibilities by contract or cooperative agreement with any qualified nonprofit organization, educational institution, or otherwise pursuant to State law. However, the SHPO may not delegate the responsibility for compliance with the Act or with grant assistance terms and conditions.

(c) The Secretary will consider individual SHPO proposals for programs that, for a specified period, include fewer duties than those section 101(b)(3) of the Act specifies, if a different approach would better serve an appropriate balance of historic property, customer or constituent, and historic preservation needs.

(d) *Procedures for review and approval of State historic preservation programs.* (1) In accordance with the Act, the Secretary will evaluate each State program for consistency with the Act periodically, but not less often than every four years. If the Secretary

determines that it meets the program requirements of paragraphs (a), (b), (e) and (f) of this section, he or she will approve the State program as set forth in this section.

(2) The Secretary may use on-site and/or off-site inquiries to perform such evaluation. The Secretary will provide the SHPO with a timely report containing written findings and analyses that highlight the strengths and weaknesses of the State program.

(3) *Approval method.* (i) If the Secretary determines that a State program is consistent with the Act, the report will include notice that the State program's approved status continues.

(ii) If the Secretary determines that a State program has major aspects not consistent with the Act, the report will include notice of deficiencies along with required actions for correcting them. Unless circumstances warrant immediate action, the Secretary will provide a specified period to allow the SHPO either to correct the deficiencies or to present for Secretarial approval a justifiable plan and timetable for correcting the deficiencies. During this period, the SHPO has the opportunity to request that the Secretary reconsider any findings and required actions.

(iii) The Secretary will provide timely notice of continued approved State program status to a SHPO successfully resolving deficiencies. Once the Secretary renews a State program's approved status, he or she generally will not review the program until the next regular evaluation period. However, if the Secretary deems it necessary, he or she may conduct a review more often.

(iv) The Secretary will provide timely notice of the revocation of a program's approved status to any SHPO whose program has deficiencies that warrant immediate action or that remain uncorrected after the expiration of the period specified pursuant to paragraph (d)(3)(ii) of this section. The Secretary will then initiate financial suspension and other actions in accordance with the Act, applicable regulatory requirements, and related guidance that the National Park Service issues.

(e) The SHPO must appoint or employ a professionally qualified staff.

(1) Except as approved pursuant to paragraph (e)(2) of this section, the staff must include at a minimum, one individual meeting ''the Secretary's (Historic Preservation) Professional Qualifications Standards'' for history, one individual meeting ''the Secretary's (Historic Preservation) Professional Qualifications Standards'' for historic or prehistoric archeology, and one individual meeting ''the Secretary's (Historic Preservation) Professional Qualifications Standards'' for architectural history. ''The Secretary's (Historic Preservation) Professional Qualifications Standards'' and related guidance are part of the larger ''Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation.'' The SHPO may determine that additional professional staff members representing the required or other disciplines are necessary to administer the State program in accordance with the Act.

(2) The Secretary will consider proposals from a SHPO for a minimum required staff composition that differs from the requirement that paragraph (e)(1) of this section specifies, if the proposal addresses better an appropriate balance of historic property, customer or constituent, and historic preservation needs in that State.

(3) When a staff position that paragraph (e)(1) of this section requires becomes vacant, the SHPO must fill the vacancy in a timely manner. In the interim, the SHPO must ensure that appropriately qualified individuals address technical matters. A vacancy in a required position that persists for more than six months is cause for review, comment, and appropriate action by the Secretary.

(f) Unless State law provides for a different method of appointment, the SHPO must appoint an adequate and qualified State historic preservation Review Board (Review Board).

(1) All Review Board members must have demonstrated competence, interest, or knowledge in historic preservation. A majority of Review Board members must meet ''the Secretary of the Interior's (Historic Preservation) Professional Qualifications Standards'' which are part of the larger ''Secretary's Standards and Guidelines for Archeology and Historic Preservation.'' The members meeting ''the Secretary's (Historic Preservation) Professional Qualifications Standards'' must include at a minimum, one individual meeting ''the Secretary's (Historic Preservation) Professional Qualifications Standards'' for history, one individual meeting ''the Secretary's (Historic Preservation) Professional Qualifications Standards'' for prehistoric archeology or historic archeology, and one individual meeting ''the Secretary's (Historic Preservation) Professional Qualifications Standards'' for architectural history. One person may meet the Standards for more than one required discipline. The other Review Board members, if any, who comprise the majority that meets ''the Secretary's (Historic Preservation) Professional Qualifications Standards'' may represent, subject to the SHPO's selection, any of the disciplines that those ''Standards'' describe.

(2) The Secretary will consider proposals from a SHPO for a minimum required Review Board composition that differs from the requirement that paragraph (f)(1) of this section specifies, if the proposal addresses better an appropriate balance of historic property, customer or constituent, and historic preservation needs in that State.

(3) When a required Review Board position becomes vacant, the SHPO must fill the vacancy in a timely manner. In the interim, the SHPO must ensure that the Review Board has access to advice from appropriately qualified individuals. A lapse of more than one year in filling the vacancy is cause for review, comment, and appropriate action by the Secretary.

(4) The Review Board must meet as often as is necessary to complete its work in a timely fashion but no less often than once a year.

(5) The Review Board must adopt written procedures governing its operations consistent with the provisions of this section and related guidance that the National Park Service issues.

(6) Review Board responsibilities include, but are not limited to, the following:

(i) Providing advice to the SHPO on the full range of Historic Preservation Fund-supported activities, that section 101 (b)(3) of the Act describes;

(ii) Reviewing and making recommendations on National Register nomination proposals;

(iii) Participating in the review of appeals to National Register nominations; and

(iv) Performing such other duties as may be appropriate.

§ 61.5 Grants to State programs.

(a) Each State with an approved State program is eligible for grants-in-aid from the Historic Preservation Fund (HPF).

(b) The National Park Service (NPS) will administer HPF matching grants-in-aid in accordance with the Act, OMB Circular A–133 and 43 CFR part 12, and related guidance that NPS issues. Failure by a State program to meet these requirements is cause for comment and appropriate action by the Secretary.

§ 61.6 Certified local government programs.

(a) Each approved State program must provide a mechanism for certification (by the State Historic Preservation Officer and the Secretary) of local governments to carry out the purposes of the Act.

(b) Each State Historic Preservation Officer (SHPO) must follow procedures that the Secretary approves for the certification of local governments. Each SHPO also must follow procedures for removal of certified local government (CLG) status for cause. A SHPO must submit any proposed amendment to its procedures to the Secretary for approval. The Secretary will act on each proposal in a timely fashion generally within 45 days of receipt.

(c) When a SHPO approves a local government certification request in accordance with the State program's National Park Service (NPS)-approved certification process, the SHPO must prepare a written certification agreement between the SHPO and the local government. The certification agreement must list the specific responsibilities of the local government when certified. The SHPO must submit to the Secretary the written certification agreement and any additional information as is necessary for the Secretary to certify the local government pursuant to the Act and this part. If the Secretary does not disapprove the proposed certification within 15 working days of receipt, the Secretary has certified the local government.

(d) Beyond the minimum responsibilities set out in the Act for all CLGs, the SHPO may make additional delegations of responsibility to individual CLGs. However, these delegations may not include the SHPO's overall responsibility derived from the Act or where law or regulation specifies.

(e) The SHPO must ensure that each local government satisfies the following minimum requirements as conditions for certification. Each CLG must:

(1) Enforce appropriate State or local legislation for the designation and protection of historic properties. The State procedures must define what constitutes appropriate legislation, as long as:

(i) Designation provisions in such legislation include the identification and registration of properties for protection that meet criteria established by the State or the locality for significant historic and prehistoric resources within the jurisdiction of the local government;

(ii) Protection provisions in such legislation include a local review process under State or local law for proposed demolitions of, changes to, or other action that may affect historic properties as paragraph (e)(1)(i) of this section describes; and

(iii) The legislation otherwise is consistent with the Act.

(2) Establish by State or local law and maintain an adequate and qualified historic preservation review commission (Commission). All Commission members must have a demonstrated interest, competence, or knowledge in historic preservation. Unless State or local legislation provides for a different method of appointment, the chief elected local official must appoint all Commission members.

(i) The State procedures must encourage certified local governments to include individuals who meet ''the Secretary's (Historic Preservation) Professional Qualifications Standards'' among the membership of the Commission, to the extent that such individuals are available in the community.

(ii) The State procedures may specify the minimum number of Commission members who must meet ''the Secretary's (Historic Preservation) Professional Qualifications Standards.'' The State procedures may also specify which, if any, disciplines the Commission's membership must include from among those disciplines that the Standards describe. Membership requirements set by the State procedures for Commissions must be cognizant of the needs and functions of Commissions in the State and subject to the availability of such professionals in the community concerned.

(iii) Provided that the Commission is otherwise adequate and qualified to carry out the responsibilities delegated to it, the SHPO may certify a local government without the minimum number or types of disciplines established in State procedures, if the local government can demonstrate that it has made a reasonable effort to fill those positions, or that an alternative composition of the Commission best meets the needs of the Commission and of the local government.

(iv) The SHPO must make available to each Commission orientation materials and training designed to provide a working knowledge of the roles and operations of Federal, State, and local historic preservation programs, and historic preservation in general.

(3) Maintain a system for the survey and inventory of historic properties. The SHPO must ensure that such systems and the data that they produce are capable of integration into and are compatible with statewide inventories and (when and as appropriate) with State and local planning processes.

(4) Provide for adequate public participation in the local historic preservation program as a whole. The SHPO must provide each CLG with appropriate guidance on mechanisms to ensure adequate public participation in the local historic preservation program including the process for evaluating properties for nomination to the National Register of Historic Places.

(5) Satisfactorily perform the responsibilities delegated to it under the Act. The SHPO must monitor and evaluate the performance of each CLG according to written standards and procedures that the SHPO establishes. If a SHPO's evaluation of a CLG's performance indicates that such performance is inadequate, the SHPO must suggest in writing ways to improve performance. If, after a period of time that the SHPO stipulates, the SHPO determines that the CLG has not improved its performance sufficiently, the SHPO may recommend that the Secretary decertify the local government. If the Secretary does not object within 30 working days of receipt, the Secretary has approved the decertification.

(f) Effects of certification include:

(1) Inclusion in the process of nominating properties to the National Register of Historic Places in accordance with sections 101 (c)(2)(A) and (c)(2)(B) of the Act. The SHPO may delegate to a CLG any of the responsibilities of the SHPO and the Review Board in processing National Register nominations as specified in 36 CFR part 60 (see also § 61.4(b)(3)), except for the authority to nominate properties directly to the National Register. A CLG may make nominations directly to NPS only when the State does not have an approved program pursuant to § 61.4.

(2) Eligibility to apply for a portion of the State's annual Historic Preservation Fund (HPF) grant award. Each State must transfer at least 10 percent of its annual HPF grant award to CLGs for historic preservation projects and programs in accordance with the Act and as § 61.7 specifies.

(g) The District of Columbia is exempt from the requirements of this section because there are no subordinated local governments in the District. If any other jurisdiction that section 301(2) of the Act defines as a State believes that its political subdivisions lack authorities similar to those of local governments in other States, and hence cannot satisfy the requirements for local government certification, it may apply to the Secretary for exemption from the requirements of this section.

(h) *Procedures for direct certification by the Secretary where there is no approved State program pursuant to § 61.4.* To the extent feasible, the Secretary will ensure that there is consistency and continuity in the CLG program of a State that does not have an approved State program.

(1) Where there is no approved State program, a local government wishing to become certified must apply directly to the Secretary.

(2) The application must demonstrate that the local government meets the specifications for certification set forth in paragraph (e) of this section.

(3) The Secretary will review certification applications under this paragraph (h) and take action in a timely fashion generally within 90 days of receipt.

§ 61.7 Subgrants to certified local governments.

(a) Each SHPO must transfer at least 10 percent of its annual Historic Preservation Fund (HPF) grant award to CLGs as subgrants for historic preservation projects and programs in accordance with the Act. In any year that the annual HPF State grant appropriation exceeds $65,000,000, SHPOs must transfer one half of the amount over $65,000,000 to CLGs according to procedures that the Secretary will establish.

(b) Each CLG is eligible to receive funds from the 10 percent (or greater) CLG share of the State's total annual HPF grant award. However, the SHPO need not award funds to all CLGs.

(c) Each SHPO must maintain and follow a procedure that the Secretary approves for the use and distribution of funds from the State's annual HPF grant award to CLGs to ensure that no CLG receives a disproportionate share of the allocation. The procedure will provide a clear basis for the funding decisions. The SHPO must submit any proposed amendment to its procedure to the Secretary for approval. The Secretary will respond to such a proposal in a timely fashion generally within 45 days of receipt.

(d) Each SHPO must notify annually each CLG of its opportunity to apply for HPF funding as well as what is entailed in the application and project selection process.

(e) Each CLG receiving an HPF grant award from the CLG share is a subgrantee of the State. The SHPO must ensure that each CLG adheres to all applicable grant conditions and government-wide and program specific requirements that the National Park Service issues. The SHPO may require specific uses of funds subgranted to CLGs. CLGs may not apply subgranted HPF monies as matching share for any other Federal grant.

(f) Where there is no approved State program pursuant to § 61.4, the Secretary will determine the method for allocating funds to CLGs in that State in accordance with the procedures set forth for the State in this section. To the extent feasible, the Secretary will ensure consistency and continuity in the funding allocation policy of the CLG program for a State that does not have an approved historic preservation program.

§ 61.8 Tribal programs. [Reserved]

§ 61.9 Grants to tribal programs. [Reserved]

§ 61.10 Waiver.

The Secretary may waive any of the requirements of the rules in this part that are not mandated by statute or by other applicable regulations if the Secretary finds, in writing, that the historic preservation program would benefit from such waiver and the waiver would not compromise the purposes, conditions, and requirements of the National Historic Preservation Act of 1966, as amended.

§ 61.11 Information collection.

(a) The Office of Management and Budget (OMB) under 44 U.S.C. 3507 *et seq.*, has approved the collection of information contained in this part. OMB has assigned clearance number 1024–0038 to this collection of information. The National Park Service (NPS) collects this information as part of the process for reviewing the procedures and programs of State and local governments participating in the national historic preservation program and the Historic Preservation Fund grant program. NPS will use the information to evaluate those programs and procedures for consistency with the National Historic Preservation Act of 1966, as amended, and compliance with government-wide grant requirements. The obligation to respond is required to obtain a benefit under these programs. Note that a Federal 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. NPS provides no assurance of confidentiality to respondents with the exception of locational information concerning some properties that government historic preservation property inventories include. Pursuant to section 304 of the National Historic Preservation Act of 1966, as amended, NPS tightly controls release of information when such release could have the potential of damaging those qualities which make a property historic.

(b) We estimate the public reporting burden for the collection of this information to average 14.06 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Ms. Diane M. Cooke, Information Collection Officer, National Park Service, 1849 C Street NW, Washington, D.C. 20240 and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior (1024–0038), Washington, D.C. 20503.

Dated: July 9, 1998.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

Note: This document was received at the Office of the Federal Register on March 4, 1999.

[FR Doc. 99–5783 Filed 3–8–99; 8:45 am]

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federal register

Tuesday
March 9, 1999

Part VII

Department of Education

National Institute on Disability and Rehabilitation Research: Proposed Funding Priority (Fiscal Years 1999–2000) for a Disability and Rehabilitation Research Project; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Notice of Proposed Funding Priority for Fiscal Years 1999–2000 for a Disability and Rehabilitation Research Project

AGENCY: Department of Education.

SUMMARY: The Secretary proposes a funding priority for a Disability and Rehabilitation Research Project (DRRP) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1999–2000. The Secretary takes this action to focus research attention on areas of national need. This priority is intended to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: Comments must be received on or before April 8, 1999.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Donna Nangle, U.S. Department of Education, 600 Maryland Avenue, S.W., room 3418, Switzer Building, Washington, D.C. 20202–2645. Comments may also be sent through the Internet: comments@ed.gov.

You must include the terms ''Leadership Training Project'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–2742. Internet: Donna__Nangle@ed.gov.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: This notice contains proposed priorities under the Disability and Rehabilitation Research Projects and Centers Program for a DRRP on leadership training. There is a reference in the proposed priority to NIDRR's Long-Range Plan (LRP). The LRP can be accessed on the World Wide Web at: http://www.ed.gov/legislation/FedRegister/announcements/1998–4/102698a.html.

This proposed priority supports the National Education Goal that calls for every adult American to possess the skills necessary to compete in a global economy.

The authority for the Secretary to establish research priorities by reserving funds to support particular research activities is contained in sections 202(g) and 204 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 762(g) and 764).

The Secretary will announce the final priority in a notice in the **Federal Register**. The final priority will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of a particular project depends on the final priority, the availability of funds, and the quality of the applications received. The publication of this proposed priority does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priority does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following the publication of the notice of final priority.

Disability and Rehabilitation Research Projects

Authority for Disability and Rehabilitation Research Projects (DRRPs) is contained in section 204(a) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 764(a)). DRRPs carry out one or more of the following types of activities, as specified in 34 CFR 350.13—350.19: research, development, demonstration, training, dissemination, utilization, and technical assistance. Disability and Rehabilitation Research Projects develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities. In addition, DRRPs improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended.

Priority

Under 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only applications that meet this priority.

Proposed Priority: Leadership Training

Introduction

Chapter Two of NIDRR's proposed LRP (63 FR 57194–57198) describes the increased rate of disability in racial and ethnic minorities. Disability services providers, including providers of vocational rehabilitation services, are studying ways to improve access to, and the provision of, services to minority populations. There is a need for new training approaches in order to increase the number of leaders with disabilities, including those from minority backgrounds, to become effective advocates for all persons with disabilities.

Section 21 of the Rehabilitation Act of 1973, as amended, requires that NIDRR reserve a portion of its appropriated funds for a fiscal year to carry out certain activities. Section 21(b)(2)(A) authorizes NIDRR to make awards to minority entities and Indian tribes to carry out activities authorized under Title II of the Act. Minority entities are defined as a historically Black college or university (a Part B institution, as defined in Section 322(2) of the Higher Education Act of 1965), a Hispanic-serving institution of higher education, an American Indian tribal college or university, or another institution of higher education whose minority student enrollment is at least 50 percent. Consistent with Section 21(b)(2)(A), eligibility to apply for this grant will be limited to minority entities and Indian tribes.

Proposed Priority

The Secretary proposes to establish a DRRP to increase the leadership competencies of individuals with disabilities, including those from minority backgrounds, who work for community-based organizations, whose purpose is to improve the educational, employment, and socio-economic status of diverse communities of people. The purpose is to enable these trained individuals to maximize the full inclusion and integration of individuals of disabilities of all ages into society, employment, independent living, family support, and economic and social self-sufficiency. The DRRP must:

(1) Identify national, State, and local disability-related education, service, civil rights, and policy entities to participate in the development of leadership training activities and strategies; and

(2) In cooperation with the entities identified under paragraph (1), train emerging leaders with disabilities, including those from minority backgrounds, who work for community-based organizations whose purpose is to improve the educational, employment, and socio-economic status of diverse communities of people. Areas of training may include: service delivery, disability civil rights history and advocacy, management, policy and financial analysis, and establishment of policies and direction for rehabilitation programs.

In carrying out these purposes, the project must:

- Address issues of equal access of minority individuals with significant disabilities to rehabilitation services; and
- Provide training on the philosophy of disability-related self-determination and self-advocacy, development of peer relationships, inclusion, independent living, and peer role models.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.html

http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the pdf, call the U.S. Government Printing Office at (202) 512–1530 or, toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

INVITATION TO COMMENT: Interested persons are invited to submit comments and recommendations regarding these proposed priorities. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 3424, Switzer Building, 330 C Street S.W., Washington, D.C., between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations: 34 CFR Part 350.

Program Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Number 84.133A, Disability and Rehabilitation Research Projects)

Dated: March 2, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–5769 Filed 3–8–99; 8:45 am]

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federal register

Tuesday
March 9, 1999

Part VIII

Department of Education

Strengthening Institutions Program, American Indian Tribally Controlled Colleges and Universities and Alaska Native and Native Hawaiian-Serving Institutions Programs; Inviting Applications for New Awards for Fiscal Year 1999; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.031]

Strengthening Institutions Program, American Indian Tribally Controlled Colleges and Universities and Alaska Native and Native Hawaiian-Serving Institutions Programs; Notice inviting applications for new awards for Fiscal Year 1999.

Purpose of Programs: Provide grants to eligible institutions of higher education (IHEs) to enable them to improve their academic quality, institutional management, and fiscal stability, and to increase their self-sufficiency, and thereby support the elements of the National Education Goals relevant to these IHEs' unique missions.

Deadline for Transmittal of Applications: May 24, 1999.

Deadline for Intergovernmental Review: July 23, 1999.

Applications Available: April 22, 1999.

Available Funds: Approximately $20,000,000 for the Strengthening Institutions Program; $3,000,000 for the American Indian Tribally Colleges and Universities Program; and $3,000,000 for the Alaska Native and Native Hawaiian-Serving Institutions Program.

Estimated Range of Awards: $327,000—$350,000 for development grants under the Strengthening Institutions Program; $30,000—$35,000 for planning grants under the Strengthening Institutions Program; $347,000—$395,000 for development grants under the American Indian Tribally Controlled Colleges Universities Program; and $347,000—$395,000 for development grants under the Alaska Native and Native Hawaiian-Serving Institutions Program.

Estimated Average Size of Awards: $341,000 for development grants under the Strengthening Institutions Program; $32,500 for planning grants under the Strengthening Institutions Program; $371,000 for development grants under the American Indian Tribally Controlled Colleges Universities Program; and $371,000 for development grants under the Alaska Native and Native Hawaiian-Serving Institutions Program.

Estimated Number of Awards: 56 development grants under the Strengthening Institutions Program; 14 planning grants under the Strengthening Institutions Program; 8 development grants under the American Indian Tribally Controlled Colleges Universities Program; and 8 development grants under the Alaska Native and Native Hawaiian-Serving Institutions Program.

Project Period: 60 months for development grants under the Strengthening Institutions Program, American Indian Tribally Controlled Colleges and Universities Program, and Alaska Native and Native Hawaiian-Serving Institutions Program; and 12 months for planning grants under the Strengthening Institutions Program.

Note: The Department is not bound by any estimates in this notice.

Special Funding Considerations: In tie breaking situations, described in 34 CFR 607.23 of the Strengthening Institutions Program regulations, the Secretary awards one additional point to an applicant institution that has an endowment fund for which the 1996–1997 market value per full-time equivalent (FTE) student was less than the comparable average per FTE student at similar type institutions. The Secretary also awards one additional point to an applicant institution that had 1996–1997 expenditures for library materials per FTE student that were less than the comparable average per FTE student at similar type institutions.

For the purpose of these funding considerations, an applicant must demonstrate that the market value of its endowment fund per FTE student, and library expenditures per FTE student, were less than the following national averages for 1996–1997:

	Average market value of endowment fund per FTE students	Average library materials expenditures per FTE students
Two-Year Public Institutions	$ 1,332	$ 45
Two-Year Non-profit Private Institutions	11,556	121
Four-Year Public Institutions	2,829	165
Four-Year Non-profit Private Institutions	42,579	245

If a tie remains, after applying the additional point or points, the Secretary determines that an institution will receive a grant according to a combined ranking of two-year and four-year institutions. This ranking is established by combining endowment values per FTE student and library expenditures per FTE student. The institutions with the lowest combined library expenditures per FTE student and endowment values per FTE student are ranked higher in strict numerical order.

Applicable Regulations: (a) The Department of Education General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 82, 85, and 86; and (b) the regulations for this program in 34 CFR Part 607, except those regulatory sections that have been supersceded by the Higher Education Amendments of 1998 (Public Law 105–244).

SUPPLEMENTARY INFORMATION: The Higher Education Amendments of 1998 amended Part A of Title III of the HEA in several material respects. The Amendments made significant changes to the Strengthening Institutions Program, and created the American Indian Tribally Controlled Colleges and Universities, and Alaska Native and Hawaiian-Serving Institution Programs. New key statutory provisions include:

(a) *General Provisions.* As amended, section 313(d) of the HEA provides that an institution that earlier received a 5-year individual Strengthening Institutions Program development grant is not eligible to receive a Strengthening Institutions Program, American Indian Tribally Controlled Colleges and Universities Program, or Alaska Native and Native Hawaiian-Serving Institutions Program grant until two years after the date on which the 5-year grant period terminates. For example, an institution that had a 5-year individual Strengthening Institutions Program development grant that ended on September 30, 1998 would not be eligible to receive another Title III, Part A grant until October 1, 2000.

(b) *Strengthening Institutions Program.* As amended, section 311(c) of the HEA authorizes the use of grant funds for the following activities—

(1) Purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional and research purposes;

(2) Construction, maintenance, renovation, and improvement in

classrooms, libraries, laboratories, and other instructional facilities, including the integration of computer technology into institutional facilities to create smart buildings;

(3) Support of faculty exchanges, faculty development, and faculty fellowships to assist in attaining advanced degrees in the field of instruction of the faculty;

(4) Development and improvement of academic programs;

(5) Purchase of library books, periodicals, and other educational materials, including telecommunications program material;

(6) Tutoring, counseling, and student service programs designed to improve academic success;

(7) Funds management, administrative management, and acquisition of equipment for use in strengthening funds management;

(8) Joint use of facilities, such as laboratories and libraries;

(9) Establishing or improving a development office to strengthen or improve contributions from alumni and the private sector;

(10) Establishing or improving an endowment fund;

(11) Creating or improving facilities for Internet or other distance learning academic instruction capabilities, including purchase or rental of telecommunications technology equipment or services; and

(12) Other activities proposed in the application that contribute to carrying out the purposes of the Strengthening Institutions Program and are approved by the Secretary as part of the review and acceptance of an application.

As amended, section 311(d) of the HEA provides that grantees under the Strengthening Institutions Program may use up to 20 percent of grant funds to establish or increase an endowment fund. However, the grantee institution must provide matching funds from non-Federal sources in an amount equal to or greater than the grant funds used for the endowment fund.

(c) *American Indian Tribally Controlled Colleges and Universities Program.* As amended, section 316(b) of the HEA defines a tribal college or university as having the meaning given in section 2 of the Tribally Controlled College or University Assistance Act of 1978, and includes an institution listed in the Equity in Educational Land Grant Status Act of 1994. In addition to meeting the definitions contained in Section 316 of the Higher Education Amendments of 1998, a tribal college or university must also submit, as part of its application for a grant under the Tribally Controlled Colleges and Universities Program, a 5-year plan for improving the assistance provided by the applicant institution to Indian students, increasing the rates at which Indian secondary school students enroll in higher education, and increasing overall postsecondary retention rates for Indian students. As amended, section 316(c) of the HEA authorizes the use of grant funds to enable institutions to improve and expand their capacities to serve American Indian students, and allows the use of grant funds for the following activities:

(1) Purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional and research purposes;

(2) Construction, maintenance, renovation, and improvement in classrooms, libraries, laboratories, and other instructional facilities, including purchase or rental of telecommunications technology equipment or services;

(3) Support of faculty exchanges, faculty development, and faculty fellowships to assist in attaining advanced degrees in the faculty's field of instruction;

(4) Academic instruction in disciplines in which Indians are underrepresented;

(5) Purchase of library books, periodicals, and other educational materials, including telecommunications program material;

(6) Tutoring, counseling, and student service programs designed to improve academic success;

(7) Funds management, administrative management, and acquisition of equipment for use in strengthening funds management;

(8) Joint use of facilities, such as laboratories and libraries;

(9) Establishing or improving a development office to strengthen or improve contributions from alumni and the private sector;

(10) Establishing or enhancing a program of teacher education designed to qualify students to teach in elementary schools or secondary schools, with a particular emphasis on teaching Indian children and youth, that must include, as part of that program, preparation for teacher certification;

(11) Establishing community outreach programs that encourage Indian elementary school and secondary school students to develop the academic skills and the interest to pursue postsecondary education; and

(12) Other activities proposed in the application that contribute to carrying out the activities listed in (1)–(11), above, and are approved by the Secretary as part of the review and acceptance of an application.

Grantees under the Tribally Controlled Colleges and Universities Program may use up to 20 percent of grant funds to establish or increase an endowment fund. However, the grantee institution must provide matching funds in an amount equal to than the grant funds used for the endowment fund.

(d) *Alaska Native and Native Hawaiian-Serving Institutions.* As amended, section 317(b) of the HEA defines an Alaska Native Serving Institution as an institution of higher education that, at the time of application, has an undergraduate student enrollment that is at least 20 percent Alaska Native students. As amended, section 317(b) also defines a Native Hawaiian-Serving Institution as an institution of higher education that, at the time of application, has an enrollment of undergraduate students that is at least 10 percent Native Hawaiian students. In addition to meeting the definitions contained in Section 317 of the Higher Education Amendments of 1998, an Alaska Native and Native Hawaiian-Serving institution must also submit, as part of its application for a grant under the Alaska Native and Native Hawaiian-Serving Institutions Program, a 5-year plan for improving the assistance provided by the applicant institution to Alaska Native or Native Hawaiian students. As amended, section 317(c) of the HEA authorizes the use of grant funds to enable the institutions to improve and expand their capacity to serve Alaska Native and Native Hawaiian students, and allows the expenditure of grant funds for the following activities—

(1) Purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional and research purposes;

(2) Renovation and improvement in classroom, library, laboratory, and other instructional facilities;

(3) Support of faculty exchanges, and faculty development, and faculty fellowships to assist in attaining advanced degrees in the faculty's field of instruction;

(4) Curriculum development and academic instruction;

(5) Purchase of library books, periodicals, microfilm, and other educational materials;

(6) Funds and administrative management, and acquisition of equipment for use in strengthening funds management;

(7) Joint use of facilities, such as laboratories and libraries; and

(8) Academic tutoring and counseling programs and student support.

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David A. Longanecker,

Assistant Secretary for Postsecondary Education.

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Federal Register

Vol. 64, No. 45

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FEDERAL REGISTER PAGES AND DATES, MARCH

9905–10100 1
10101–10204 2
10205–10386 3
10387–10554 4
10555–10918 5
10919–11372 8
11373–11754 9

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7168 10101
7169 10379
7170 10383
7171 10385
7172 11373

Executive Orders:
12852 (Amended by EO 13114) 10099
13114 10099

Administrative Orders:

Presidential Determinations:
No. 99–15 of February 26, 1999 11319

5 CFR

532 ..... 9905, 9905

7 CFR

989 10919
1434 10923
1469 10929

Proposed Rules:
301 11392
916 11346
917 11346
1823 10235
1956 10235

8 CFR

274a 11533

9 CFR

Proposed Rules:
1 10400
3 10400
113 10400
391 10402

10 CFR

Proposed Rules:
63 10405

11 CFR

Proposed Rules:
2 10405
4 10405
5 10405

12 CFR

3 10194
208 10194
225 10201
325 10194
567 10194

Proposed Rules:
602 10954

14 CFR

25 10740
39 ..... 9906, 9908, 9910, 9911, 9912, 10205, 10208, 10209, 10211, 10213, 10216, 10555, 10557, 10560, 10935, 11375, 11533
71 ..... 10387, 10562, 10563, 10740, 10937, 10938, 10939, 10940
97 ..... 9912, 9914

Proposed Rules:
39 ..... 9939, 10237, 10578, 10959, 11401
71 ..... 9940, 10238, 10239, 10241, 10242, 10243, 10410, 10411, 10962, 11533

15 CFR

774 10852
806 10387

16 CFR

Proposed Rules:
1213 10245
1500 10245
1513 10245
1615 10963
1616 10963

17 CFR

228 11103
229 11103
230 ..... 11090, 11095, 11103
239 ..... 11103, 11118
240 10564

Proposed Rules:
210 10579
228 10579
239 11118
240 ..... 9948, 10579, 11124

19 CFR

133 11376

20 CFR

404 10103

21 CFR

26 11376
50 10942
177 10943
216 10944
520 ..... 10103, 10389
556 10103
812 10942
874 10947

22 CFR

171 10949

24 CFR

3500 10080

26 CFR

1.....10218, 11378
602.....10218

Proposed Rules:

1.....10262
20.....10964

27 CFR

13.....10949

28 CFR

Proposed Rules:

25.....10262
549.....10095

33 CFR

62.....10104
117.....10104
320.....11708
326.....11708
331.....11708

34 CFR

694.....10184

36 CFR

61.....11736

39 CFR

20.....9915, 10219
111.....10950

Proposed Rules:

111.....11402

40 CFR

52.....9916
58.....10389
60.....10105, 11536
63.....11536
80.....10366
82.....10374
136.....10391
180 .....10227, 10233, 10567
271.....10111
439.....10391

Proposed Rules:

Ch. 1.....10066
52.....9951, 9952, 10118, 10265, 10342
60.....10119, 11555
63.....11555, 11560
94.....10596
97.....10118
136.....10596
271.....10121
372.....9957, 10597
435.....10266

42 CFR

Proposed Rules:

447.....10412
457.....10412

43 CFR

Proposed Rules:

3800.....9960

44 CFR

64.....9919
65 .....11378, 11380, 11382, 11384
67.....11386, 11388

Proposed Rules:

67.....11403, 11409
77.....10181
80.....10181
81.....10181
82.....10181
83.....10181
152.....10181
220.....10181
221.....10181
222.....10181
207.....10181
301.....10181
303.....10181
306.....10181
308.....10181
320.....10181
324.....10181
325.....10181
328.....10181
333.....10181
336.....10181

45 CFR

60.....9921

Proposed Rules:

92.....10412
95.....10412
1224.....10872
2508.....10872

46 CFR

502.....9922
510.....11156
514.....11186
515.....11156
520.....11218
530.....11186
535.....11236
545.....9922
565.....10395
571.....9922
572.....11236
583.....11156

47 CFR

73.....9923
90.....10395

Proposed Rules:

1.....9960
2.....10266
95.....10266

48 CFR

Ch. 1.....10530, 10552
1.....10531, 10548
4.....10531
5.....10535
8.....10535
11.....10538
12.....10531, 10535
13.....10538
14.....10531
15.....10544
16.....10538
19.....10535
22.....10545
25.....10548
26.....10531
27.....10531
31.....10547
32.....10531, 10548
41.....10531
52 .....10531, 10535, 10538, 10545, 10548
53.....10548
1806.....10571
1815.....10573
1819.....10571
1842.....10573
1852.....10571, 10573

49 CFR

171.....9923, 10742
172.....10742
173.....10742
174.....10742
175.....10742
176.....10742
177.....10742
178.....10742
180.....10742
571.....10786, 11724
575.....11724
596.....10786
1000—1199 10234

Proposed Rules:

350.....11414
571.....9961, 10604
572.....10965

50 CFR

216.....9925
285.....10576
600.....9932
660.....9932
679 .....9937, 10397, 10398, 10952, 11390

Proposed Rules:

216.....9965
285.....10438
600.....10438
622.....10612, 10613
630.....10438
635.....10438
644.....10438
648.....11431
660.....10439
678.....10438

REMINDERS

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RULES GOING INTO EFFECT MARCH 9, 1999

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Raisins produced from grapes grown in—

California; published 3-8-99

AGRICULTURE DEPARTMENT

Food and Nutrition Service

Food distribution programs:

Indian households in Oklahoma; waiver authority; published 1-8-99

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Tuna, Atlantic bluefin fisheries; published 3-5-99

ENVIRONMENTAL PROTECTION AGENCY

Drinking water:

National primary drinking water regulations—

Small public water systems; unregulated contaminant monitoring requirements; suspension; published 1-8-99

NATIONAL CREDIT UNION ADMINISTRATION

Credit unions:

Loan interest rates; published 2-8-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Boeing; published 2-2-99

TREASURY DEPARTMENT

Customs Service

Trademarks, tradenames, and copyrights:

Technical amendment; published 3-9-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Hazelnuts grown in—

Oregon and Washington; comments due by 3-15-99; published 1-14-99

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Livestock and poultry disease and control:

Pseudorabies in swine; payment of indemnity; comments due by 3-16-99; published 1-15-99

Plant-related quarantine, foreign:

Unmanufactured wood articles; solid wood packing material; comments due by 3-16-99; published 1-20-99

CONSUMER PRODUCT SAFETY COMMISSION

Poison prevention packaging:

Child-resistant packaging requirements—

Household products containing methacrylic acid; comments due by 3-15-99; published 12-30-98

DEFENSE DEPARTMENT

Acquisition regulations:

Para-aramid fibers and yarns; comments due by 3-16-99; published 1-15-99

Taxpayer identification numbers and commercial and government entity codes; comments due by 3-16-99; published 1-15-99

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Ferroalloys production, etc.; comments due by 3-15-99; published 2-12-99

Air pollutants; hazardous; national emission standards:

Glycol ethers category; redefinition; comments due by 3-15-99; published 1-12-99

Air pollution control; new motor vehicles and engines:

Compression-ignition marine engines at or above 37 kilowatts; comments due by 3-15-99; published 3-5-99

Air programs:

State program approvals and delegation of Federal authorities; comments due by 3-15-99; published 1-12-99

Air quality implementation plans; approval and promulgation; various States:

California; comments due by 3-15-99; published 2-11-99

Illinois; comments due by 3-19-99; published 2-17-99

New Jersey; comments due by 3-17-99; published 1-22-99

Water pollution; effluent guidelines for point source categories:

Centralized waste treatment facilities; comments due by 3-15-99; published 1-13-99

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Telecommunications Act of 1996; implementation—

Unauthorized changes of consumers' long distance carriers (slamming); subscriber carrier selection changes; comments due by 3-18-99; published 2-16-99

Radio stations; table of assignments:

New Hampshire; comments due by 3-15-99; published 2-4-99

New York; comments due by 3-15-99; published 2-4-99

North Dakota; comments due by 3-15-99; published 2-4-99

Oklahoma; comments due by 3-15-99; published 2-4-99

Vermont; comments due by 3-15-99; published 2-4-99

FEDERAL RESERVE SYSTEM

Availability of funds and collection of checks (Regulation CC):

Nonlocal check availability schedule; maximum time limit on hold shortened; comments due by 3-15-99; published 12-15-98

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Mortgage and loan insurance programs:

Single family mortgage insurance—

Informed consumer choice disclosure; comments due by 3-18-99; published 2-16-99

INTERIOR DEPARTMENT

Indian Affairs Bureau

Transportation Equity Act for 21st Century; implementation:

Indian Reservation Roads Negotiated Rulemaking Committee; membership; comments due by 3-15-99; published 2-11-99

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Redband trout; comments due by 3-16-99; published 1-6-99

INTERIOR DEPARTMENT

Minerals Management Service

Royalty and offshore management programs; order appeals; comments due by 3-15-99; published 1-12-99

INTERIOR DEPARTMENT

Hearings and Appeals Office, Interior Department

Minerals Management Service; royalty and offshore management programs; order appeals; comments due by 3-15-99; published 1-12-99

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Texas; comments due by 3-15-99; published 2-12-99

LABOR DEPARTMENT

Nationwide employment statistics system; election process for State agency representatives for consultations with Labor Department; comments due by 3-18-99; published 12-18-98

NORTHEAST DAIRY COMPACT COMMISSION

Over-order price regulations:

Milk handlers; administrative assessment; comments due by 3-17-99; published 1-28-99

NUCLEAR REGULATORY COMMISSION

Biproduct material; domestic licensing:

Industrial devices containing byproduct material; information requirements; comments due by 3-16-99; published 12-2-98

SMALL BUSINESS ADMINISTRATION

Government contracting programs:

Contract bundling; comments due by 3-15-99; published 1-13-99

SOCIAL SECURITY ADMINISTRATION

Social security benefits and supplemental security income:

Federal old age, survivors and disability insurance and aged, blind, and disabled—

Substantial gainful activity amounts; average monthly earnings guidelines; comments due by 3-18-99; published 2-16-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Agusta S.p.A.; comments due by 3-19-99; published 2-17-99

Ayres Corp.; comments due by 3-15-99; published 1-13-99

Bell; comments due by 3-15-99; published 1-12-99

Boeing; comments due by 3-15-99; published 1-28-99

British Aerospace; comments due by 3-15-99; published 2-17-99

Industrie Aeronautiche e Meccaniche; comments due by 3-19-99; published 2-18-99

Robinson Helicopter Co.; comments due by 3-16-99; published 1-15-99

Sikorsky; comments due by 3-16-99; published 1-15-99

Class D and Class E airspace; comments due by 3-18-99; published 2-1-99

Class E airspace; comments due by 3-15-99; published 1-26-99

Federal airways; comments due by 3-15-99; published 1-25-99

TREASURY DEPARTMENT

Internal Revenue Service

Excise taxes:

Prepaid telephone cards; communications excise tax; comments due by 3-17-99; published 12-17-98

Income taxes and employment taxes and collection of income taxes at source:

Retirement plans; distributions notice and consent requirements; new technologies; comments due by 3-18-99; published 12-18-98

Income taxes:

Qualified retirement plans, etc.—

Relief from disqualification for plans accepting rollovers; comments due by 3-17-99; published 12-17-98

Procedure and administration:

Payment of internal revenue taxes by credit card and debit card; cross-reference; and payment by check or money order; comments due by 3-15-99; published 12-15-98

VETERANS AFFAIRS DEPARTMENT

Board of Veterans Appeals:

Appeals regulations and rules of practice—

Board decisions revised on grounds of clear and unmistakable error; representatives notification; comments due by 3-15-99; published 2-12-99